



# Land and Buildings Transaction Tax (Scotland) Act 2013

2013 asp 11

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**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th June 2013 and received Royal Assent on 31st July 2013**

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

VALID FROM 01/04/2015

## **PART 1 S**

### LAND AND BUILDINGS TRANSACTION TAX

#### **1 The tax S**

- (1) A tax (to be known as land and buildings transaction tax) is to be charged on land transactions.
- (2) The tax is chargeable—
  - (a) whether or not there is an instrument effecting the transaction,
  - (b) if there is such an instrument, whether or not it is executed in Scotland, and
  - (c) whether or not any party to the transaction is present, or resident, in Scotland.
- (3) The Tax Authority is to be responsible for the collection and management of the tax.

#### **2 Overview S**

This Act is arranged as follows—

Part 2 makes provision for the key concepts underlying the tax including—

- (a) which transactions are land transactions,
- (b) which interests are, and which are not, chargeable interests in land,

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- (c) when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
- (d) which land transactions are, and which are not, chargeable transactions,
- (e) what is, and what is not, chargeable consideration in relation to a chargeable transaction,

Part 3 makes provision for—

- (a) the amount of tax payable,
- (b) relief from the tax, and
- (c) who is liable to pay the tax,

Part 4 provides for returns relating to land transactions and for the payment of the tax,

Part 5 contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts,

Part 6 contains provision about the application of the Act to leases and non-residential licences,

Part 7 contains general provision, including provisions about the Tax Authority and definitions of expressions used in the Act,

Part 8 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

VALID FROM 01/04/2015

## PART 2 **S**

### KEY CONCEPTS

## CHAPTER 1 **S**

### LAND TRANSACTIONS AND CHARGEABLE INTERESTS

#### *Land transaction*

### 3 Land transaction **S**

A land transaction is the acquisition of a chargeable interest.

#### *Chargeable interest*

### 4 Chargeable interest **S**

(1) A chargeable interest is an interest of a kind mentioned in subsection (2) which is not an exempt interest.

(2) The interests are—

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- (a) a real right or other interest in or over land in Scotland, or
  - (b) the benefit of an obligation, restriction or condition affecting the value of any such right or interest.
- (3) In subsection (2), “land in Scotland” does not include land below mean low water mark.

## 5 Exempt interest **S**

- (1) An interest is exempt if it is a security interest.
- (2) In subsection (1) a “security interest” means a real right or other interest in or over land held for the purpose of securing the payment of money or the performance of any other obligation.
- (3) See also paragraphs 21 to 24 of schedule 7 (which make additional provision about exempt interests in relation to alternative property finance arrangements).
- (4) The Scottish Ministers may, by regulations, modify this section so as to—
- (a) provide that a description of a real right or other interest in or over land is an exempt interest,
  - (b) provide that a description of a real right or other interest in or over land is no longer to be an exempt interest,
  - (c) vary a description of an exempt interest.

### *Acquisition and disposal of chargeable interest*

## 6 Acquisition and disposal of chargeable interest **S**

- (1) Each of the following is an acquisition and a disposal of a chargeable interest—
- (a) the creation of the interest,
  - (b) the renunciation or release of the interest,
  - (c) the variation of the interest (but not the variation of a lease).
- (2) The variation of a lease is treated as an acquisition and a disposal of a chargeable interest only where paragraph 29 of schedule 19 (reduction of rent or term or other variation of lease) applies.
- (3) A person acquires a chargeable interest where—
- (a) the person becomes entitled to the interest on its creation,
  - (b) the person's interest or right is benefitted or enlarged by the renunciation or release of the interest, or
  - (c) the person benefits from the variation of the interest.
- (4) A person disposes of a chargeable interest where—
- (a) the person's interest or right becomes subject to the interest on its creation,
  - (b) the person ceases to be entitled to the interest on its being renounced or released, or
  - (c) the person's interest or right is subject to or limited by the variation of the interest.

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- (5) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any enactment or by operation of law.

## 7 Buyer and seller **S**

- (1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.
- (2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.
- (3) The seller, in relation to a land transaction, is the person who disposes of the subject-matter of the transaction.

## CHAPTER 2 **S**

### PROVISION ABOUT PARTICULAR TRANSACTIONS

#### *General rules for contracts requiring conveyance*

## 8 Contract and conveyance **S**

- (1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.
- (2) A person is not regarded as entering into a land transaction by reason of entering into the contract.
- (3) But see sections 9 and 10.

## 9 Completion without substantial performance **S**

- (1) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction.
- (2) In this case the effective date of the transaction is the date of completion.

## 10 Substantial performance without completion **S**

- (1) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.
- (2) In this case the effective date of the transaction is when the contract is substantially performed.
- (3) Where subsection (1) applies and the contract is subsequently completed by a conveyance—
- (a) both the contract and the transaction effected on completion are notifiable transactions, and

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- (b) tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract.
- (4) Where subsection (1) applies and 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 that subsection is to be (to that extent) repaid by the Tax Authority.
- (5) That repayment must be claimed by amendment of the land transaction return made in respect of the contract.
- (6) Where paragraph 25 of schedule 19 (leases) applies, it applies in place of this section.

*Contract providing for conveyance to third party*

**11 Contract providing for conveyance to third party S**

- (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 C or to B.
- (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 Act as acquiring a chargeable interest, and accordingly as entering into a land transaction.
- (4) In such a case, the effective date of the transaction is when the contract is substantially performed.
- (5) 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) is to be (to that extent) repaid by the Tax Authority.
- (6) Repayment must be claimed by amendment of the land transaction return made in respect of the contract.
- (7) Subject to subsection (8), sections 8 to 10 do not apply in relation to the contract.
- (8) 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,
 sections 8 to 10 apply to that obligation as they apply to a contract for a land transaction that is to be completed by a conveyance.
- (9) Sections 8 to 10 apply in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1), that is to be completed by a conveyance.
- (10) References to completion in sections 8 to 10, as they apply by virtue of subsection (9), include references to conveyance by A to C of the subject-matter of the contract between B and C.

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### *Options etc.*

#### **12 Options and rights of pre-emption** **S**

- (1) The acquisition of—
  - (a) an option binding the grantor to enter into a land transaction, or
  - (b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,
 is a land transaction distinct from any land transaction resulting from the exercise of the option or right.
- (2) They may be linked transactions (see section 57).
- (3) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge the grantor's obligations under the option in some other way.
- (4) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).
- (5) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.

### *Exchanges*

#### **13 Exchanges** **S**

- (1) Where a land transaction is entered into by a person as buyer (alone or jointly) wholly or partly in consideration of another land transaction being entered into by that person (alone or jointly) as seller, this Act applies in relation to each transaction as if each were distinct and separate from the other (and they are not linked transactions within the meaning of section 57).
- (2) A transaction is treated for the purposes of this Act as entered into by a person as buyer wholly or partly in consideration of another land transaction being entered into by that person as seller in any case where an obligation to give consideration for a land transaction that a person enters into as buyer is met wholly or partly by way of that person entering into another transaction as seller.
- (3) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—
  - (a) paragraphs 5 and 6 of schedule 2,
  - (b) paragraph 17 of that schedule.

### *Interpretation*

#### **14 Meaning of “substantial performance”** **S**

- (1) A contract is substantially performed when—

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- (a) the buyer, or a person connected with the buyer, takes possession of the whole, or substantially the whole, of the subject-matter of the contract,
  - (b) a substantial amount of the consideration is paid or provided, or
  - (c) there is an assignation, 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 original buyer becomes entitled to call for a conveyance to that person.
- (2) For the purpose of subsection (1)(a)—
- (a) possession includes receipt of rent or the right to receive it, and
  - (b) it is immaterial whether possession is taken under the contract or under a licence.
- (3) For the purposes of subsection (1)(b), a substantial amount of the consideration is paid or provided—
- (a) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided,
  - (b) if the only consideration is rent, when the first payment of rent is made,
  - (c) if the consideration includes both rent and other consideration, when—
    - (i) the whole or substantially the whole of the consideration other than rent is paid or provided, or
    - (ii) the first payment of rent is made.
- (4) For the purposes of subsection (1)(c) the reference to an assignation, subsale or other transaction includes the grant or assignation of an option.

## CHAPTER 3 **S**

### CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

#### *Chargeable transaction*

#### **15 Chargeable transaction **S****

A land transaction is a chargeable transaction unless it is—

- (a) an exempt transaction, or
- (b) otherwise exempt from charge.

#### **16 Exempt transaction **S****

A transaction is exempt if schedule 1 provides that it is so exempt.

#### *Chargeable consideration*

#### **17 Chargeable consideration **S****

- (1) Schedule 2 makes provision as to the chargeable consideration for a transaction.
- (2) The Scottish Ministers may, by regulations, modify this Act relating to chargeable consideration and make such other provision as they consider appropriate about—

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- (a) what is to be treated as chargeable consideration,
- (b) the determination of the amount or value of chargeable consideration.

*Contingent, uncertain or unascertained consideration*

### **18 Contingent consideration** S

- (1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is contingent.
- (2) The amount or value of the consideration is to be determined on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.
- (3) In this Act, “contingent”, in relation to consideration, means—
  - (a) that it is to be paid or provided only if some uncertain future event occurs, or
  - (b) that it is to cease to be paid or provided if some uncertain future event occurs.

### **19 Uncertain or unascertained consideration** S

- (1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained.
- (2) The amount or value of the consideration is to be determined on the basis of a reasonable estimate.
- (3) In this section, “uncertain”, in relation to consideration, means its amount or value depends on uncertain future events.

### **20 Contingent, uncertain or unascertained consideration: further provision** S

Sections 18 and 19 have effect subject to—

- (a) section 31 (return where contingency ceases or consideration ascertained),
- (b) section 32 (contingency ceases or consideration is ascertained: less tax payable), and
- (c) section 41 (application to defer payment in case of contingent or uncertain consideration).

*Annuities etc.*

### **21 Annuities etc.: chargeable consideration limited to 12 years' payments** S

- (1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—
  - (a) for life,
  - (b) in perpetuity,
  - (c) for an indefinite period, or
  - (d) for a definite period exceeding 12 years.
- (2) The consideration to be taken into account is limited to 12 years' annual payments.



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- (3) Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are to be taken into account.
- (4) No account is to be taken of any provision for adjustment of the amount payable in line with the retail prices index, the consumer prices index or any other similar index.
- (5) References in this section to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction.
- (6) For the purposes of this section the amount or value of any payment is to be determined (if necessary) in accordance with section 18 (contingent consideration) or 19 (uncertain or unascertained consideration).
- (7) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically.
- (8) References to payment are to be read accordingly.
- (9) Where this section applies—
  - (a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply, and
  - (b) no application may be made under section 41 (application to defer payment in case of contingent or uncertain consideration).

#### *Deemed market value*

### **22 Deemed market value where transaction involves connected company S**

- (1) This section applies where the buyer is a company and—
  - (a) the seller is connected with the buyer, or
  - (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the seller is connected.
- (2) The chargeable consideration for the transaction is to be taken to be not less than—
  - (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
  - (b) if the acquisition is the grant of a lease, the rent.
- (3) In this section—

“company” means a body corporate,  
“shares” includes stock and the reference to shares in a company includes reference to securities issued by a company.
- (4) Where this section applies, paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (5) But this section has effect subject to any other provision affording exemption or relief from the tax.
- (6) This section is subject to the exceptions provided for in section 23.

### **23 Exceptions from deemed market value S**

- (1) Section 22 does not apply in the following cases.

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- (2) In the following provisions “the company” means the company that is the buyer in relation to the transaction in question.
- (3) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.
- (4) Case 2 is where—
- (a) immediately after the transaction the company holds the property as trustee, and
  - (b) the seller is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).
- (5) Case 3 is where—
- (a) the seller is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
  - (b) it is not the case that—
    - (i) the subject-matter of the transaction, or
    - (ii) an interest from which that interest is derived,
 has, within the period of 3 years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the seller.

## PART 3 S

### CALCULATION OF TAX AND RELIEFS

#### *Amount of tax chargeable*

## 24 Tax rates and tax bands S

- (1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band—
- (a) for residential property transactions, and
  - (b) for non-residential property transactions.
- (2) An order under subsection (1) must specify, in the case of each type of transaction—
- (a) a nil rate tax band and at least two other tax bands,
  - (b) the tax rate for the nil rate tax band, which must be 0%, and
  - (c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.
- (3) A transaction is a residential property transaction if—
- (a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
  - (b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.

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- (4) A transaction is a non-residential property transaction if—
- (a) the main subject-matter of the transaction consists of or includes an interest in land that is not residential property, or
  - (b) where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest.
- (5) In the case of a transaction for which the whole or part of the chargeable consideration is rent, see paragraph 3 of schedule 19 (leases) for the tax rates and tax bands applicable to such consideration.

#### Commencement Information

**II** S. 24 in force at 7.11.2014 by [S.S.I. 2014/279](#), art. 2, [Sch.](#)

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#### 25 Amount of tax chargeable **S**

- (1) The amount of tax chargeable in respect of a chargeable transaction is to be determined as follows.
- Step 1* For each tax band applicable to the type of transaction, multiply so much of the chargeable consideration for the transaction as falls within the band by the tax rate for that band.
- Step 2* Calculate the sum of the amounts reached under Step 1. The result is the amount of tax chargeable.
- (2) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to schedule 19 (leases).
- (3) This section is subject to—
- (a) schedule 5 (multiple dwellings relief),
  - (b) schedule 9 (crofting community right to buy relief),
  - (c) Part 3 of schedule 11 (acquisition relief).

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#### 26 Amount of tax chargeable: linked transactions **S**

- (1) Where a chargeable transaction is one of a number of linked transactions, the amount of tax chargeable in respect of the transaction is to be determined as follows.
- Step 1* For each tax band applicable to the type of transaction, multiply so much of the relevant consideration as falls within the band by the tax rate for that band.
- Step 2* Calculate the sum of the amounts reached under Step 1. The result is the total tax chargeable.
- Step 3* Divide the chargeable consideration for the transaction by the relevant consideration.

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*Step 4* Multiply the total tax chargeable by the fraction reached under Step 3. The result is the amount of tax chargeable.

- (2) The relevant consideration is the total of the chargeable consideration for all the linked transactions.
- (3) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to schedule 19 (leases).
- (4) This section is subject to—
  - (a) schedule 5 (multiple dwellings relief),
  - (b) schedule 9 (crofting community right to buy relief),
  - (c) Part 3 of schedule 11 (acquisition relief).

### *Reliefs*

## 27 **Reliefs** S

- (1) The following schedules provide for reliefs from the tax in relation to certain land transactions—
  - schedule 3 (sale and leaseback relief),
  - schedule 4 (relief for certain acquisitions of residential property),
  - schedule 5 (multiple dwellings relief),
  - schedule 6 (relief for certain acquisitions by registered social landlords),
  - schedule 7 (alternative property finance relief),
  - schedule 8 (relief for alternative finance investment bonds),
  - schedule 9 (crofting community right to buy relief),
  - schedule 10 (group relief),
  - schedule 11 (reconstruction relief and acquisition relief),
  - schedule 12 (relief for incorporation of limited liability partnership),
  - schedule 13 (charities relief),
  - schedule 14 (relief for certain compulsory purchases),
  - schedule 15 (relief for compliance with planning obligations),
  - schedule 16 (public bodies relief).
- (2) Any relief under any of those schedules must be claimed in the first return made in relation to the transaction or in an amendment of that return.
- (3) The Scottish Ministers may, by order, modify this Act so as to—
  - (a) add a relief,
  - (b) modify an existing relief, or
  - (c) remove a relief.
- (4) An order under subsection (3) may also modify any other enactment that the Scottish Ministers consider appropriate.

#### **Commencement Information**

**I2** [S. 27\(1\)](#) in force at 7.11.2014 for specified purposes by [S.S.I. 2014/279](#), [art. 2](#), [Sch.](#)

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**13** S. 27(3)(4) in force at 7.11.2014 by S.S.I. 2014/279, art. 2, Sch.

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*Liability for tax*

**28** **Liability for tax** **S**

- (1) The buyer is liable to pay the tax in respect of a chargeable transaction.
- (2) As to the liability of buyers acting jointly, see—
  - (a) section 48(2)(c) (joint buyers),
  - (b) paragraph 3 of schedule 17 (partnerships), and
  - (c) paragraphs 15 to 18 of schedule 18 (trusts).

**PART 4** **S**

RETURNS AND PAYMENT

**CHAPTER 1** **S**

RETURNS

VALID FROM 01/04/2015

*Duty to make return*

**29** **Duty to make return** **S**

- (1) The buyer in a notifiable transaction must make a return to the Tax Authority.
- (2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.

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### *Notifiable transactions*

#### **30 Notifiable transactions** **S**

- (1) A land transaction is notifiable unless it is—
  - (a) an exempt transaction,
  - (b) an acquisition of the ownership of land where the chargeable consideration for the acquisition is less than £40,000,
  - (c) an acquisition of a chargeable interest other than a major interest in land where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, or
  - (d) an acquisition specified in subsection (2).
- (2) The following transactions in relation to leases are also not notifiable—
  - (a) the grant of a lease for a period of 7 years or more where—
    - (i) any chargeable consideration other than rent is less than £40,000, and
    - (ii) the relevant rent is less than £1,000,
  - (b) the assignation or renunciation of a lease where—
    - (i) the lease was originally granted for a period of 7 years or more, and
    - (ii) the chargeable consideration for the assignation or renunciation is less than £40,000,
  - (c) the grant of a lease for a period of less than 7 years where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, and
  - (d) the assignation or renunciation of a lease where—
    - (i) the lease was originally granted for a period of less than 7 years, and
    - (ii) the chargeable consideration for the assignation or renunciation does not exceed the nil rate tax band applicable to the transaction.
- (3) In subsections (1) and (2), “chargeable consideration”—
  - (a) where the transaction is one of a number of linked transactions, means the total of the chargeable consideration for all the linked transactions,
  - (b) includes any amount in respect of which tax would be chargeable but for a relief.
- (4) In subsection (2)(a)(ii), “relevant rent” means—
  - (a) the annual rent (as defined in paragraph 9(7) of schedule 19), or
  - (b) in the case of the grant of a lease to which paragraph 29 of schedule 17 applies, the relevant chargeable proportion of the annual rent (as calculated in accordance with that paragraph).
- (5) The exceptions in subsections (1)(a) to (d) and (2) do not apply where the transaction is a transaction that a person is treated as entering into by virtue of section 11(3).
- (6) This section has effect subject to—
  - (a) section 10(3) (substantial performance without completion),

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- (b) paragraph 17(6) of schedule 2 (arrangements involving public or educational bodies),
  - (c) paragraph 12 of schedule 7 (alternative property finance), and
  - (d) paragraph 41 of schedule 17 (transfer of partnership interests).
- (7) The Scottish Ministers may, by order, amend subsection (1)(b), (2)(a)(i) or (b)(ii) so as to substitute, for the figure for the time being specified there, a different figure.

VALID FROM 01/04/2015

### *Adjustments and further returns*

#### **31 Return where contingency ceases or consideration ascertained** S

- (1) The buyer in a land transaction must make a return to the Tax Authority if—
- (a) section 18(2) or 19(2) (contingent, uncertain or unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
  - (b) an event mentioned in subsection (2) occurs, and
  - (c) the effect of the event is that—
    - (i) the transaction becomes notifiable,
    - (ii) additional tax is payable in respect of the transaction, or
    - (iii) tax is payable where none was payable before.
- (2) The events are—
- (a) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur, or
  - (b) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the event occurred.
- (4) The return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (6) This section does not apply so far as the consideration consists of rent (see schedule 19 (leases)) unless the effect of the event mentioned in subsection (2) is that the transaction becomes notifiable.

#### **32 Contingency ceases or consideration ascertained: less tax payable** S

- (1) The buyer in a land transaction may take one of the steps mentioned in subsection (2) to obtain a repayment of tax if—



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- (a) section 18(2) or 19(2) (contingent, uncertain and unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
  - (b) an event mentioned in section 31(2) occurs, and
  - (c) the effect of the event is that less tax is payable in respect of the transaction than has already been paid.
- (2) The steps are—
- (a) within the period allowed for amendment of the land transaction return, amend the return accordingly,
  - (b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority for repayment of the amount overpaid.
- (3) This section does not apply so far as the consideration consists of rent (see schedule 19 (leases)).

### 33 Further return where relief withdrawn **S**

- (1) The buyer in a land transaction must make a further return to the Tax Authority if relief is withdrawn to any extent under—
- (a) Part 5 of schedule 4 (relief for certain acquisitions of residential property),
  - (b) Part 5 of schedule 5 (transfer of multiple dwellings),
  - (c) Part 4 of schedule 8 (relief for alternative finance investment bonds),
  - (d) Part 3 of schedule 10 (group relief),
  - (e) Part 4 of schedule 11 (reconstruction relief and acquisition relief), or
  - (f) paragraph 4 of schedule 13 (charities relief).
- (2) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the relevant event occurred.
- (4) The relevant event is—
- (a) in relation to the withdrawal of relief under schedule 4, an event mentioned in paragraph 14(a), (b) or (c) or 16(a), (b) or (c) of that schedule,
  - (b) in relation to the withdrawal of relief under schedule 5, an event mentioned in paragraph 16(a) or 18(a) of that schedule,
  - (c) in relation to the withdrawal of relief under schedule 8, an event mentioned in paragraph 16 of that schedule,
  - (d) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller within the meaning of schedule 10,
  - (e) in relation to the withdrawal of reconstruction relief or acquisition relief, the change of control of the acquiring company mentioned in paragraph 13 of schedule 11,
  - (f) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 5 and 6 of schedule 13.



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### 34 Return or further return in consequence of later linked transaction **S**

- (1) This section applies where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that—
  - (a) the earlier transaction becomes notifiable,
  - (b) additional tax is payable in respect of the earlier transaction, or
  - (c) tax is payable in respect of the earlier transaction where none was payable before.
- (2) The buyer in the earlier transaction must make a return (or further return) in respect of that transaction.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the later transaction.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable as a result of the later transaction.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the earlier transaction.
- (6) This section does not affect any requirement to make a land transaction return in respect of the later transaction.

*Returns: form and content etc.*

VALID FROM 01/04/2015

### 35 Form and content **S**

- (1) A return under this Act must—
  - (a) be in the form specified by the Tax Authority, <sup>F1</sup>...
  - (b) contain the information specified by the Tax Authority [<sup>F2</sup>and
  - (c) be made in such manner as specified by the Tax Authority.]
- (2) The Tax Authority may specify different forms and information for—
  - (a) different kinds of return, and
  - (b) different kinds of transaction.
- (3) The return is treated as containing any information provided by the buyer for the purpose of completing the return.

#### Textual Amendments

**F1** Word in s. 35(1) repealed (7.11.2014) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), s. 260(2), [Sch. 4 para. 9\(6\)\(a\)](#) (with ss. 257-259); S.S.I. 2014/278, art. 2, Sch.

**F2** S. 35(1)(c) and word inserted (7.11.2014) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), s. 260(2), [Sch. 4 para. 9\(6\)\(b\)](#) (with ss. 257-259); S.S.I. 2014/278, art. 2, Sch.

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VALID FROM 01/04/2015

### 36 Declaration **S**

- (1) A return under this Act must also include a declaration by the buyer that the return is, to the best of the buyer's knowledge, correct and complete.
- (2) However, where the buyer authorises an agent to complete the return—
  - (a) the agent must certify in the return that the buyer has declared that the information provided in the return, with the exception of the relevant date, is to the best of the buyer's knowledge, correct and complete, and
  - (b) the return must include a declaration by the agent that the relevant date provided in the return is, to the best of the agent's knowledge, correct.
- (3) The relevant date is—
  - (a) in relation to a return under section 29, the effective date of the transaction,
  - (b) in relation to a return under section 31, the date of the event as a result of which the return is required,
  - (c) in relation to a return under section 33, the date on which the relevant event occurred,
  - (d) in relation to a return under section 34, the effective date of the later transaction,
  - (e) in relation to a return under paragraph 10 of schedule 19 (leases), the review date (see paragraph 10(7)),
  - (f) in relation to a return under paragraph 11 of that schedule, the day on which the lease is assigned or terminated,
  - (g) in relation to a return under paragraph 20 of that schedule, the date on which the 1 year period mentioned in paragraph 20(3) ended,
  - (h) in relation to a return under paragraph 22 of that schedule, the date on which the deemed fixed term mentioned in paragraph 22(2) ended,
  - (i) in relation to a return under paragraph 30 of that schedule, the date from which the variation mentioned in that paragraph takes effect.

VALID FROM 01/04/2015

### 37 Amendment **S**

- (1) The buyer in a land transaction may amend a return relating to the transaction by notice to the Tax Authority.
- (2) The notice must—
  - (a) be in the form specified by the Tax Authority, and
  - (b) contain the information specified by the Tax Authority.
- (3) An amendment may not be made more than 12 months after the last day of the period within which the return must be made.

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### [<sup>F3</sup>37A Communications from taxpayers to the Tax Authority **S**

- (1) Any notice, application or other thing that a person is required or permitted by provision made in or under this Act to give to the Tax Authority must comply with the requirements set out in subsection (2).
- (2) The requirements are that the thing—
  - (a) must be in the form specified by the Tax Authority,
  - (b) must contain the information specified by the Tax Authority, and
  - (c) must be given in the manner specified by the Tax Authority.
- (3) Subsections (1) and (2) are subject to any different provision made in or under this Act.]

#### Textual Amendments

- F3** S. 37A inserted (7.11.2014) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), Sch. 4 para. 9(8) (with ss. 257-259); S.S.I. 2014/278, art. 2, Sch.

VALID FROM 01/04/2015

#### Miscellaneous

### 38 Interpretation **S**

References in this Act to the making of a return are to the making of a return that—

- (a) complies with the requirements of sections 35 and 36, and
- (b) contains an assessment of the tax chargeable in respect of the transaction (if one is required).

### 39 Power to amend period in which returns must be made **S**

- (1) The Scottish Ministers may, by order, amend a provision listed in subsection (2) so as to substitute, for the period for the time being specified there, a different period.
- (2) The provisions are—
  - (a) section 29(3),
  - (b) section 31(3),
  - (c) section 33(3),
  - (d) in schedule 19 (leases)—
    - (i) paragraph 10(3),
    - (ii) paragraph 11(3),
    - (iii) paragraph 20(3)(a),
    - (iv) paragraph 22(2)(a),
    - (v) paragraph 30(2)(a).

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## CHAPTER 2 **S**

### PAYMENT OF TAX

VALID FROM 01/04/2015

#### 40 **Payment of tax** **S**

- (1) Tax payable in respect of a land transaction must be paid to the Tax Authority.
- (2) Where a return is to be made under any of the following provisions, the tax or additional tax payable must be paid at the same time as the return is made—
  - (a) section 29 (land transaction return),
  - (b) section 31 (return where contingency ceases or consideration ascertained),
  - (c) section 33 (further return where relief withdrawn),
  - (d) section 34 (return or further return in consequence of later linked transaction), or
  - (e) in schedule 19 (leases)—
    - (i) paragraph 10 (return on 3-yearly review),
    - (ii) paragraph 11 (return on assignation or termination of lease),
    - (iii) paragraph 20 (return where lease for fixed term continues after end of term),
    - (iv) paragraph 22 (return in relation to lease for indefinite term),
    - (v) paragraph 30 (transactions which become notifiable on variation of rent or term).
- (3) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.
- (4) For the purposes of subsections (2) and (3), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of the tax.
- (5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

VALID FROM 01/04/2015

#### 41 **Application to defer payment in case of contingent or uncertain consideration** **S**

- (1) The buyer may apply to the Tax Authority to defer payment of tax in a case where—
  - (a) the amount of tax payable depends on the amount or value of chargeable consideration that, at the effective date of the transaction, is contingent or uncertain, and
  - (b) the chargeable consideration falls to be paid or provided on one or more future dates of which at least one falls, or may fall, more than 6 months after the effective date of the transaction.

<sup>F4</sup>(2) .....

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- (3) An application under this section does not affect the buyer's obligations as regards payment of tax in respect of chargeable consideration that—
- (a) has already been paid or provided at the time the application is made, or
  - (b) is not contingent and whose amount is ascertained or ascertainable at the time the application is made.
- (4) Subsection (3) applies as regards both the time of payment and the calculation of the amount payable.
- (5) Unless the Scottish Ministers provide otherwise by order, this section does not apply to consideration so far as it consists of rent.

#### Textual Amendments

- F4** S. 41(2) repealed (7.11.2014) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), Sch. 4 para. 9(9) (with ss. 257-259); S.S.I. 2014/278, art. 2, Sch.

## 42 Regulations about applications under section 41 **S**

- (1) The Scottish Ministers may, by regulations, make further provision about applications under section 41.
- (2) The regulations may in particular—
- (a) specify when an application is to be made,
  - (b) require the buyer to provide such information as the Tax Authority may reasonably require for the purposes of determining whether to accept an application,
  - (c) specify the grounds on which an application may be refused,
  - (d) specify the procedure for reaching a decision on the application,
  - (e) make provision for postponing payment of tax when an application has been made,
  - (f) provide for the effect of accepting an application,
  - (g) require the buyer to make a return or further return, and to make such payments or further payments of tax as may be specified, in such circumstances as may be specified.
- (3) Regulations under this section may also provide that where the circumstances in subsection (4) arise—
- (a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply in relation to the payment, and
  - (b) instead, any necessary adjustment is to be made in accordance with the regulations.
- (4) The circumstances are—
- (a) a payment is made as mentioned in section 41(3), and
  - (b) an application under this section is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment.

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### Commencement Information

**I4** S. 42 in force at 7.11.2014 by S.S.I. 2014/279, art. 2, Sch.

VALID FROM 01/04/2015

## CHAPTER 3 **S**

### REGISTRATION OF LAND TRANSACTIONS ETC.

#### **43 Return to be made and tax paid before application for registration **S****

- (1) The Keeper of the Registers of Scotland (“the Keeper”) may not accept an application for registration of a document effecting or evidencing a notifiable transaction unless—
  - (a) a land transaction return has been made in relation to the transaction, and
  - (b) any tax payable in respect of the transaction has been paid.
- (2) The Tax Authority must provide the Keeper with such information as the Keeper reasonably requires to comply with subsection (1).
- (3) In this section, “registration” means registration or recording in any register under the management and control of the Keeper.
- (4) For the purposes of subsection (1)(b), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for the payment of the tax.
- (5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

VALID FROM 01/04/2015

## PART 5 **S**

### APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

#### **44 Companies and other organisations **S****

- (1) Everything to be done by an organisation under this Act is to be done by the organisation acting through—
  - (a) the proper officer of the organisation, or
  - (b) another person having for the time being the express, implied or apparent authority of the organisation to act on its behalf for the purpose.
- (2) Subsection (1)(b) does not apply where a liquidator has been appointed for the organisation.
- (3) For the purposes of this Act—

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- (a) the proper officer of a company is the secretary, or person acting as secretary, of the company,
  - (b) the proper officer of an unincorporated association (or of a company that does not have a proper officer within paragraph (a)) is the treasurer, or person acting as treasurer, of the association or, as the case may be, the company.
- (4) But, where a liquidator or administrator has been appointed for the organisation, the liquidator or, as the case may be, the administrator is the proper officer.
- (5) If two or more persons are appointed to act jointly or concurrently as the administrator of the organisation, the reference to the administrator in subsection (4) is to—
- (a) such one of them as is specified in a notice given to the Tax Authority by those persons for the purposes of this section, or
  - (b) where the Tax Authority is not so notified, such one or more of those persons as the Tax Authority may designate as the proper officer for those purposes.
- (6) In this section, “organisation” means—
- (a) a company,
  - (b) an unincorporated association.

#### 45 Unit trust schemes **S**

- (1) This Act (with the exception of the provisions mentioned in subsection (8)) applies in relation to a unit trust scheme as if—
- (a) the trustees were a company, and
  - (b) the rights of the unit holders were shares in the company.
- (2) Each of the parts of an umbrella scheme is regarded for the purposes of this Act as a separate unit trust scheme and the umbrella scheme as a whole is not so regarded.
- (3) An “umbrella scheme” means a unit trust scheme—
- (a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and
  - (b) under which the participants are entitled to exchange rights in one pool for rights in another.
- (4) A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.
- (5) In this Act—
- “unit trust scheme” has the same meaning as in the Financial Services and Markets Act 2000 (c.8), and
  - “unit holder” means a participant in a unit trust scheme.
- (6) The Scottish Ministers may, by regulations, provide that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Act.
- (7) Section 620 of the Corporation Tax Act 2010 (c.4) (court investment funds treated as authorised unit trusts) applies for the purposes of this Act as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme.



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- (8) A unit trust scheme is not to be treated as a company for the purposes of schedules 10 (group relief) and 11 (reconstruction relief and acquisition relief).

#### 46 **Open-ended investment companies** S

- (1) The Scottish Ministers may, by regulations, make such provision as they consider appropriate for securing that the provisions of this Act have effect in relation to—
- (a) open-ended investment companies of such description as may be prescribed in the regulations, and
  - (b) transactions involving such companies,
- in a manner corresponding, subject to such modifications as the Scottish Ministers consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such trusts.
- (2) The regulations may, in particular, make provision—
- (a) modifying the operation of any provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme,
  - (b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Act.
- (3) In this section—
- “open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000 (c.8),
- “umbrella scheme” has the same meaning as in section 45.

#### 47 **Residential property holding companies** S

- (1) The Scottish Ministers may, by regulations, provide for qualifying transfers of interests in residential property holding companies—
- (a) to be treated as land transactions, and
  - (b) to be chargeable transactions.
- (2) A “residential property holding company” means a company—
- (a) whose sole or main activity is holding or investing in chargeable interests in residential property,
  - (b) whose property consists of or includes chargeable interests in residential property, and
  - (c) whose shares are not listed on a recognised stock exchange.
- (3) For the purposes of subsection (2)(a) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.
- (4) A “qualifying transfer” is a transfer of an interest in such a company that results in the transferee acquiring the right to occupy some or all of the company's residential property.



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- (5) Regulations under subsection (1) may in particular make provision, or further provision, about—
- (a) the kinds of interest, transfer of which is a qualifying transfer,
  - (b) the kinds of transfers which are and are not qualifying transfers,
  - (c) the rights which are rights to occupy a company's residential property for the purposes of such transfers,
  - (d) the chargeable consideration in the case of such transfers,
  - (e) the tax bands and tax rates that are to apply to such transfers (including specifying tax bands and tax rates for such transfers),
  - (f) the person who is to be liable to pay the tax,
  - (g) the application or disapplication of any reliefs in relation to such transfers.
- (6) Regulations under subsection (1) may also provide that, for the purposes of this section, “residential property” includes such other kinds of property as may be specified in the regulations.
- (7) Regulations under subsection (1) may modify any enactment (including this Act).

#### 48 Joint buyers **S**

- (1) This section applies to a land transaction where there are two or more buyers who are or will be jointly entitled to the interest acquired.
- (2) The general rules are that—
- (a) any obligation of the buyer under this Act in relation to the transaction is an obligation of the buyers jointly but may be discharged by any of them,
  - (b) anything required or authorised by this Act to be done in relation to the buyer must be done by or in relation to all of them, and
  - (c) any liability of the buyer under this Act in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the buyers.
- (3) The general rules are subject to the following provisions—
- (a) if a return is required in relation to the transaction, a single return must be made,
  - (b) the declaration required by section 36(1) or (2)(a) (declaration that return is complete and correct) must be made by all the buyers.
- (4) This section has effect subject to—
- (a) the provisions of schedule 17 (partnerships), and
  - (b) paragraphs 15 to 18 of schedule 18 (trusts).

#### 49 Partnerships **S**

- (1) Schedule 17 makes provision about the application of this Act in relation to partnerships.
- (2) The Scottish Ministers may, by regulations, modify schedule 17.

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## 50 Trusts **S**

- (1) Schedule 18 makes provision about the application of this Act in relation to trusts.
- (2) The Scottish Ministers may, by regulations, modify schedule 18.

## 51 Persons acting in a representative capacity etc. **S**

- (1) The personal representatives of a person who is the buyer in a land transaction—
  - (a) are responsible for discharging the obligations of the buyer under this Act in relation to the transaction, and
  - (b) may deduct any payment made by them under this Act out of the assets and effects of the deceased person.
- (2) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Act in relation to a transaction affecting that property as if the property were not under the direction and control of the court.

## PART 6 **S**

### APPLICATION OF ACT TO LEASES AND LICENCES

#### *Leases*

## 52 Application of this Act to leases **S**

- (1) Schedule 19 makes provision about the application of this Act to chargeable transactions involving leases, including provision for the calculation of the tax chargeable in relation to such transactions.
- (2) The Scottish Ministers may, by regulations, modify schedule 19.

### Commencement Information

**I5** S. 52(1) in force at 7.11.2014 for specified purposes by S.S.I. 2014/279, art. 2, Sch.

#### *Licences*

## 53 Application of this Act to licences **S**

- (1) The Scottish Ministers may, by regulations, prescribe descriptions of non-residential licences to occupy property, transactions in relation to which are to be land transactions for the purposes of this Act.
- (2) The regulations may also make provision, among other things—
  - (a) for transactions, which result in the acquisition of interests in licences, to be land transactions,
  - (b) for what the chargeable consideration is to be in relation to a licence,
  - (c) for the determination of the amount or value of that chargeable consideration,

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- (d) for the calculation of the tax chargeable,
- (e) specifying that certain land transactions relating to a licence are not to be notifiable under section 30.

(3) Regulations under this section may modify any enactment (including this Act).

#### Commencement Information

**I6** S. 53 in force at 7.11.2014 by S.S.I. 2014/279, art. 2, Sch.

## PART 7 **S**

### GENERAL AND INTERPRETATION

#### *The Tax Authority*

#### **54 The Tax Authority **S****

(1) For the purposes of this Act, the Tax Authority is [<sup>F5</sup>Revenue Scotland ].

<sup>F6</sup>(2) .....

#### Textual Amendments

**F5** Words in s. 54(1) substituted (25.9.2014) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(1), Sch. 4 para. 9(12)(a) (with ss. 257-259)

**F6** S. 54(2) repealed (25.9.2014) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(1), Sch. 4 para. 9(12)(b) (with ss. 257-259)

#### <sup>F7</sup>**55 Delegation of functions to Keeper **S****

.....

#### Textual Amendments

**F7** S. 55 repealed (1.1.2015) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(1), Sch. 4 para. 9(13) (with ss. 257-259); S.S.I. 2014/370, art. 2, Sch.

VALID FROM 01/04/2015

#### **56 Review and appeal **S****

(1) The Scottish Ministers may, by regulations, make provision for—

- (a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,
- (b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.

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(2) Regulations under this section may modify any provision made by or under this Act.

(3) In this section, “specified” means specified in the regulations.

VALID FROM 01/04/2015

### *Linked transactions*

#### 57 **Linked transactions** **S**

- (1) Transactions are linked for the purposes of this Act if they form part of a single scheme, arrangement or series of transactions between the same seller and buyer or, in either case, persons connected with them.
- (2) Where there are two or more linked transactions with the same effective date, the buyer, or all of the buyers if there is more than one, may make a single return as if all of those transactions that are notifiable were a single notifiable transaction.
- (3) Where two or more buyers make a single return in respect of linked transactions, section 48 applies as if—
  - (a) the transaction in question were a single transaction, and
  - (b) those buyers were buyers acting jointly.
- (4) This section is subject to section 13(1) (exchanges).

VALID FROM 01/04/2015

### *Connected persons*

#### 58 **Connected persons** **S**

Section 1122 of the Corporation Tax Act 2010 (c.4) (connected persons) has effect for the purposes of the following provisions—

- (a) section 14,
- (b) section 22,
- (c) section 23,
- (d) section 57,
- (e) paragraphs 1, 11 and 13 of schedule 2,
- (f) schedule 4,
- (g) Part 5 of schedule 5,
- (h) schedule 8,
- (i) schedule 17 (but see paragraph 49),
- (j) paragraph 17 of schedule 19.

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## Interpretation

### 59 Meaning of “residential property” **S**

- (1) In this Act “residential property” means—
  - (a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use,
  - (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other structure on such land), or
  - (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).
- (2) Accordingly, “non-residential property” means any property that is not residential property.
- (3) For the purposes of subsection (1) a building used for any of the following purposes is used as a dwelling—
  - (a) residential accommodation for school pupils,
  - (b) residential accommodation for students, other than accommodation falling within subsection (4)(b),
  - (c) residential accommodation for members of the armed forces,
  - (d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (4).
- (4) For the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling—
  - (a) a home or other institution providing residential accommodation for children,
  - (b) a hall of residence for students in further or higher education,
  - (c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder,
  - (d) a hospital or hospice,
  - (e) a prison or similar establishment,
  - (f) a hotel or inn or similar establishment.
- (5) Where a building is used for a purpose specified in subsection (4), no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use.
- (6) Where a building that is not in use is suitable for use for at least one of the purposes specified in subsection (3) and at least one of those specified in subsection (4)—
  - (a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same paragraph, no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use,
  - (b) otherwise, the building is to be treated for those purposes as suitable for use as a dwelling.
- (7) In this section “building” includes part of a building.
- (8) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the

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purposes of this Act as it applies in relation to that transaction, those dwellings are treated as not being residential property.

- (9) The Scottish Ministers may, by order—
- (a) amend subsections (3) and (4) so as to change or clarify the cases where use of a building is, or is not to be, use of a building as a dwelling for the purposes of subsection (1),
  - (b) amend or repeal subsection (8).

#### Commencement Information

I7 S. 59 in force at 7.11.2014 for specified purposes by S.S.I. 2014/279, art. 2, Sch.

VALID FROM 01/04/2015

#### 60 Meaning of “major interest” in land **S**

References in this Act to a “major interest” in land are to—

- (a) ownership of land, or
- (b) the tenant's right over or interest in land subject to a lease.

VALID FROM 01/04/2015

#### 61 Meaning of “subject-matter” and “main subject-matter” **S**

References in this Act to the subject-matter of a land transaction or a contract are to the chargeable interest acquired (the “main subject-matter”) by virtue of the transaction or contract, together with any interest or right pertaining to it that is acquired with it.

VALID FROM 01/04/2015

#### 62 Meaning of “market value” **S**

For the purpose of this Act “market value” is to be determined as for the purposes of the Taxation of Chargeable Gains Act 1992 (c.12) (see sections 272 to 274 of that Act).

VALID FROM 01/04/2015

#### 63 Meaning of “effective date” of a transaction **S**

- (1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Act is—
- (a) the date of completion, or

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- (b) such alternative date as the Scottish Ministers may prescribe by regulations.
- (2) Other provision as to the effective date of certain land transactions is made by—
- (a) section 10(2) (substantial performance of contract without [<sup>F8</sup>completion]),
  - (b) section 11(4) (substantial performance of contract requiring conveyance to third party),
  - (c) section 12(4) (options and rights of pre-emption), and
  - (d) paragraph 25(2) of schedule 19 (agreement for lease substantially performed etc.).

#### Textual Amendments

- F8** Word in s. 63(2)(a) substituted (7.11.2014) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), **Sch. 4 para. 9(15)** (with ss. 257-259); S.S.I. 2014/278, art. 2, Sch.

VALID FROM 01/04/2015

#### 64 Meaning of “completion” **S**

- (1) In this Act, “completion” means—
- (a) in relation to a lease, when it is executed by the parties or constituted by any means,
  - (b) in relation to any other transaction, the settlement of the transaction.
- (2) References to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract.

VALID FROM 01/04/2015

#### 65 General interpretation **S**

In this Act—

- “acquisition relief” means relief under Part 3 of schedule 11,
- “charities relief” means relief under schedule 13,
- “company” means (except as otherwise expressly provided) a body corporate other than a partnership,
- “contract” includes any agreement,
- “conveyance” includes any instrument,
- “employee” includes an office-holder and related expressions have a corresponding meaning,
- “group relief” means relief under schedule 10,
- “jointly entitled” means entitled as joint owners or common owners,
- “land transaction return” means a return under section 29(1),
- “personal representatives”, in relation to a person, include that person's executors,
- “reconstruction relief” means relief under Part 2 of schedule 11,

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“registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),

“the tax” means land and buildings transaction tax.

VALID FROM 01/04/2015

**66 Index of defined expressions S**

Schedule 20 contains an index of expressions defined or otherwise explained in this Act.

**PART 8 S**

FINAL PROVISIONS

*Ancillary provision*

**67 Ancillary provision S**

- (1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

*Subordinate legislation*

**68 Subordinate legislation S**

- (1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations includes the power to make—
  - (a) different provision for different cases or descriptions of case or for different purposes,
  - (b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.
- (2) Orders and regulations under the following provisions are subject to the affirmative procedure—
  - (a) section 5(4),
  - (b) section 24(1) (but only the first order),
  - (c) section 27(3),
  - (d) section 49(2),
  - (e) section 50(2),
  - (f) section 52(2),
  - (g) section 53(1),
  - <sup>F9</sup>(h) .....



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- (i) section 59(9),
  - (j) paragraph 8 of schedule 1,
  - (k) paragraph 3 of schedule 19 (but only the first order),
  - (l) paragraph 7(1) of that schedule.
- (3) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are also subject to the affirmative procedure—
- (a) section 17(2),
  - (b) section 47(1),
  - (c) section 56(1),
  - (d) section 67(1).
- (4) An order mentioned in subsection (5)—
- (a) must be laid before the Scottish Parliament, and
  - (b) ceases to have effect on the expiry of the period of 28 days beginning with the date on which it is made unless, before the expiry of that period, it is approved by resolution of the Parliament.
- (5) The order is a second or subsequent order under—
- (a) section 24(1), or
  - (b) paragraph 3 of schedule 19.
- (6) In reckoning any period of 28 days for the purposes of subsection (4)(b), no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved, or
  - (b) in recess for more than 4 days.
- [<sup>F10</sup>(6A) Subsection (4)(b) is without prejudice to—
- (a) anything previously done by reference to an order mentioned in subsection (5), or
  - (b) the making of a new order.]
- (7) All other orders and regulations under this Act are subject to the negative procedure.
- (8) This section does not apply to an order under section 70(2).

#### Textual Amendments

- F9** S. 68(2)(h) repealed (7.11.2014) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), Sch. 4 para. 9(16)(a) (with ss. 257-259); S.S.I. 2014/278, art. 2, Sch.
- F10** S. 68(6A) inserted (7.11.2014) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), Sch. 4 para. 9(16)(c) (with ss. 257-259); S.S.I. 2014/278, art. 2, Sch.

#### Crown application

### 69 Crown application **S**

Nothing in this Act affects Her Majesty in Her private capacity.

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### Commencement and short title

#### 70 Commencement **S**

- (1) This section and sections 54,<sup>F11</sup>... 67, 68, 69 and 71 come into force on the day of Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.
- (3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

#### Textual Amendments

- F11** Word in s. 70(1) repealed (1.1.2015) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#), s. 260(2), [Sch. 4 para. 9\(17\)](#) (with ss. 257-259); S.S.I. 2014/370, art. 2, Sch.

#### 71 Short title **S**

The short title of this Act is the Land and Buildings Transaction Tax (Scotland) Act 2013.

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VALID FROM 01/04/2015

SCHEDULE 1 **S**

(introduced by section 16)

EXEMPT TRANSACTIONS

.....

VALID FROM 01/04/2015

SCHEDULE 2 **S**

(introduced by section 17)

CHARGEABLE CONSIDERATION

.....

VALID FROM 01/04/2015

SCHEDULE 3 **S**

(introduced by section 27)

SALE AND LEASEBACK RELIEF

.....

VALID FROM 01/04/2015

SCHEDULE 4 **S**

(introduced by section 27)

RELIEF FOR CERTAIN ACQUISITIONS OF RESIDENTIAL PROPERTY

.....

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## SCHEDULE 5 **S**

(introduced by section 27)

### MULTIPLE DWELLINGS RELIEF

VALID FROM 01/04/2015

#### PART 1 **S**

##### 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.

VALID FROM 01/04/2015

#### PART 2 **S**

##### 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—

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- (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
  - (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.

VALID FROM 01/04/2015

### **PART 3 S**

#### 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.

#### **Commencement Information**

**I8** Sch. 5 para. 8 in force at 1.4.2015 by [S.S.I. 2015/108](#), [art. 2](#)

#### *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.

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## PART 4 S

### THE RELIEF

#### *Calculation of relief*

VALID FROM 01/04/2015

10 The amount of tax chargeable in relation to a relevant transaction is—

VALID FROM 01/04/2015

[<sup>F13</sup>11. But where  $DT \times ND$  is less than the minimum prescribed amount, the amount of tax chargeable in relation to the relevant transaction is—  
 MPA + RT  
 where—  
 MPA is the minimum prescribed amount, and  
 RT is the tax due in relation to remaining property.]

#### Textual Amendments

**F13** Sch. 5 paras. 11, 12 substituted (1.4.2015) by [S.S.I. 2015/123](#), arts. 1, 8

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.

#### Commencement Information

**I9** [Sch. 5 para. 12](#) in force at 7.11.2014 for specified purposes by [S.S.I. 2014/279](#), art. 2, [Sch.](#)

VALID FROM 01/04/2015

#### *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.

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*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.

VALID FROM 01/04/2015

*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.

VALID FROM 01/04/2015

*General*

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

VALID FROM 01/04/2015

**PART 5 S**

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.

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### *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 [<sup>F14</sup>effective] 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.

#### **Textual Amendments**

**F14** Word in Sch. 5 para. 18(b) substituted (7.11.2014) by [Revenue Scotland and Tax Powers Act 2014](#) (asp 16) , s. 260(2) , [Sch. 4 para. 9\(19\)](#) (with ss. 257-259 ) ; S.S.I. 2014/278 , art. 2 , Sch.

- 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.

VALID FROM 01/04/2015

## **PART 6 S**

### 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



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	(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.

VALID FROM 01/04/2015

SCHEDULE 6 **S**  
(introduced by section 27)

RELIEF FOR CERTAIN ACQUISITIONS BY REGISTERED SOCIAL LANDLORDS

.....

VALID FROM 01/04/2015

SCHEDULE 7 **S**  
(introduced by section 27)

ALTERNATIVE PROPERTY FINANCE RELIEF

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**Status:** Point in time view as at 01/01/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Land and Buildings Transaction Tax (Scotland) Act 2013. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 01/04/2015

**SCHEDULE 8** **S**  
 (introduced by section 27)

RELIEF FOR ALTERNATIVE FINANCE INVESTMENT BONDS

.....

VALID FROM 01/04/2015

**SCHEDULE 9** **S**  
 (introduced by section 27)

CROFTING COMMUNITY RIGHT TO BUY RELIEF

.....

VALID FROM 01/04/2015

**SCHEDULE 10** **S**  
 (introduced by section 27)

GROUP RELIEF

.....

**SCHEDULE 11** **S**  
 (introduced by section 27)

RECONSTRUCTION RELIEF AND ACQUISITION RELIEF

VALID FROM 01/04/2015

**PART 1** **S**

INTRODUCTORY

*Overview*

- 1 (1) This schedule provides for relief for certain transactions in connection with the reconstruction and acquisition of companies.

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(2) It is arranged as follows—

- Part 2 provides for when reconstruction relief is available,
- Part 3 provides for when acquisition relief is available,
- Part 4 provides for when the relief is withdrawn,
- Part 5 defines expressions used in this schedule.

VALID FROM 01/04/2015

## PART 2 S

### RECONSTRUCTION RELIEF

#### *The relief*

- 2 A land transaction is exempt from charge if—
- (a) it is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and
  - (b) the qualifying conditions are met.

#### *Qualifying conditions*

- 3 The qualifying conditions are—
- (a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company,
  - (b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all shareholders of the target company,
  - (c) that after the acquisition has been made—
    - (i) each shareholder of each of the companies is a shareholder of the other, and
    - (ii) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder,
  - (d) that the acquisition—
    - (i) is effected for bona fide commercial reasons, and
    - (ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

4 Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in the qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.

5 If, immediately before the acquisition, the target company or the acquiring company holds any of its own shares, the shares are treated for the purposes

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of qualifying conditions [<sup>F15</sup>(b) and (c)] as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).

#### Textual Amendments

**F15** Words in Sch. 11 para. 5 substituted (1.1.2015) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), **Sch. 4 para. 9(21)(b)** (with ss. 257-259); S.S.I. 2014/370, art. 2, Sch.

## PART 3 S

### ACQUISITION RELIEF

#### *The relief*

- 6 (1) This paragraph applies where—
- (a) a land transaction is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and
  - (b) the qualifying conditions are met.
- (2) The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.
- (3) The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

#### Commencement Information

**I10** Sch. 11 para. 6 in force at 7.11.2014 for specified purposes by S.S.I. 2014/279, art. 2, **Sch.**

VALID FROM 01/04/2015

#### *Qualifying conditions*

- 7 The qualifying conditions are—
- (a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”),
  - (b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—
    - (i) the target company, or
    - (ii) all or any of the target company's shareholders,
  - (c) that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part,
  - (d) that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests,

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	(e) that the acquisition— <ul style="list-style-type: none"><li>(i) is effected for bona fide commercial reasons, and</li><li>(ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.</li></ul>
8	Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of— <ul style="list-style-type: none"><li>(a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,</li><li>(b) the assumption or discharge by the acquiring company of liabilities of the target company, or</li><li>(c) both of those things.</li></ul>

VALID FROM 01/04/2015

#### *Interpretation*

9	For the purposes of qualifying condition (c)— <ul style="list-style-type: none"><li>(a) companies are associated if one has control of the other or both are controlled by the same person or <sup>F16</sup>persons],</li><li>(b) “control” is to be construed in accordance with section 1124 of the Corporation Tax Act 2010 (c.4).</li></ul>
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#### **Textual Amendments**

**F16** Word in Sch. 11 para. 9(a) substituted (1.1.2015) by [Revenue Scotland and Tax Powers Act 2014 \(asp 16\)](#) , s. 260(2) , [Sch. 4 para. 9\(21\)\(c\)](#) (with ss. 257-259 ) ; S.S.I. 2014/370 , art. 2 , Sch.

10	In this Part of this schedule, “trade” includes any venture in the nature of trade.
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VALID FROM 01/04/2015

## **PART 4 S**

### WITHDRAWAL OF RELIEF

#### *Overview*

11	This Part of this schedule is arranged as follows— <ul style="list-style-type: none"><li>paragraphs 12 to 14 provide for circumstances in which relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,</li><li>paragraphs 15 to 21 provide for circumstances in which, despite paragraphs 12 to 14, relief is not withdrawn,</li></ul>
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**Status:** Point in time view as at 01/01/2015. This version of this Act contains provisions that are not valid for this point in time.

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paragraphs 22 to 28 provide for the withdrawal of relief, which would otherwise not be withdrawn by virtue of paragraph 17 or 19, on the occurrence of certain subsequent events, paragraphs 29 to 32 provide for how the tax chargeable is determined where relief is withdrawn or partially withdrawn.

*Withdrawal of relief*

12 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn where paragraphs 13 and 14 apply.

13 This paragraph applies where control of the acquiring company changes—

- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or
- (b) in pursuance of, or in connection with, arrangements made before the end of that period.

14 This paragraph applies where, at the time the control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—

- (a) that was acquired by the acquiring company under the relevant transaction, or
- (b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction in relation to which relief under this schedule was available but was not claimed.

*Case where relief not withdrawn: change of control of acquiring company as result of transaction connected to divorce etc.*

15 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—

- (a) any of paragraphs (a) to (d) of paragraph 4 of schedule 1 (transactions connected with divorce etc.), or
- (b) any of paragraphs (a) to (d) of paragraph 5 of schedule 1 (transactions connected with dissolution of civil partnership etc.).

16 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that—

- (a) is effected as mentioned in paragraph 7(1) of schedule 1, and
- (b) meets the conditions in paragraph 7(2) of that schedule (variation of testamentary dispositions etc.).

*Case where relief not withdrawn: exempt intra-group transfer*

17 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of an exempt intra-group transfer.

18 But see paragraphs 22 to 24 for the effect of a subsequent non-exempt transfer.

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*Case where relief not withdrawn: share acquisition relief*

19 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.

20 But see paragraphs 25 to 28 for the effect of a change in the control of that other company.

*Case where relief not withdrawn: controlling loan creditor*

21 Relief under Part 2 or Part 3 of this schedule is not withdrawn where—

- (a) control of the acquiring company changes as a result of a loan creditor (within the meaning of section 453 of the Corporation Tax Act 2010 (c.4)) becoming, or ceasing to be, treated as having control of the company, and
- (b) the other persons who were previously treated as controlling the company continue to be so treated.

*Withdrawal of relief on subsequent non-exempt transfer*

22 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—

- (a) control of the acquiring company changes as a result of an exempt intra-group transfer, and
- (b) paragraphs 23 and 24 apply.

23 This paragraph applies where a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—

- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or
- (b) in pursuance of, or in connection with, arrangements made before the end of that period.

24 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—

- (a) that was transferred to the acquiring company by the relevant transaction, or
- (b) that is derived from an interest so transferred,

and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

*Withdrawal of relief where share acquisition relief applied but control of company subsequently changes*

25 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—

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	<ul style="list-style-type: none"> <li>(a) control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies, and</li> <li>(b) paragraphs 26 to 28 apply.</li> </ul>
26	<p>This paragraph applies where control of the other company mentioned in paragraph 25(a) changes—</p> <ul style="list-style-type: none"> <li>(a) before the end of the period of 3 years beginning with the effective date of the relevant transaction, or</li> <li>(b) in pursuance of, or in connection with, arrangements made before the end of that period.</li> </ul>
27	<p>This paragraph applies where, at the time control of that other company changes, it holds shares transferred to it by the transfer mentioned in paragraph 25(a), or any shares derived from shares so transferred.</p>
28	<p>This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—</p> <ul style="list-style-type: none"> <li>(a) that was transferred to the acquiring company by the relevant transaction, or</li> <li>(b) that is derived from an interest so transferred,</li> </ul> <p>and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.</p>
	<i>Amount of tax chargeable where relief withdrawn</i>
29	<p>Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 30.</p>
30	<p>The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—</p> <ul style="list-style-type: none"> <li>(a) the market value of the subject-matter of the transaction,</li> <li>(b) if the acquisition was the grant of a lease, the rent.</li> </ul>
	<i>Amount of tax chargeable where relief partially withdrawn</i>
31	<p>Where relief is partially withdrawn, the tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 30.</p>
32	<p>An “appropriate proportion” means an appropriate proportion having regard to—</p> <ul style="list-style-type: none"> <li>(a) the subject-matter of the relevant transaction, and</li> <li>(b) what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.</li> </ul>
	<i>Interpretation</i>
33	<p>In paragraphs 19 and 25—</p> <ul style="list-style-type: none"> <li>(a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c.41), and</li> </ul>



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	(b) a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.
34	In this Part of this schedule, references to control of a company changing are to the company becoming controlled— (a) by a different person, (b) by a different number of persons, or (c) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.
35	In this Part of this schedule— “control” is to be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4), “exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the Finance Act 1930 (c.28) or section 11 of the Finance Act (Northern Ireland) 1954 (c.23 (NI)) (transfers between associated bodies corporate), “relevant associated company”, in relation to the acquiring company, means a company— (a) that is controlled by the acquiring company immediately before the control of that company changes, and (b) of which control changes in consequence of the change of control of that company.

VALID FROM 01/04/2015

## PART 5 S

### INTERPRETATION

#### *When are companies members of the same group?*

36 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

#### *When is a company a subsidiary of another company?*

37 A company (A) is the 75% subsidiary of another company (B) if B—  
(a) is beneficial owner of not less than 75% of the ordinary share capital of A,  
(b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and  
(c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.

38 For the purposes of paragraph 37—  
(a) the ownership referred to in that paragraph is ownership either directly or through another company or companies, and

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	(b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).
39	“Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
40	Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 37(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.
41	But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 37(b) and (c).
	<i>Other definitions</i>
42	In this schedule— “arrangements” include any scheme, agreement or understanding, whether or not legally enforceable, “non-redeemable shares” means shares that are not redeemable shares.

VALID FROM 01/04/2015

SCHEDULE 12 **S**  
*(introduced by section 27)*

RELIEF FOR INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

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SCHEDULE 13 **S**  
*(introduced by section 27)*

CHARITIES RELIEF

VALID FROM 01/04/2015

*The relief*

1	A land transaction is exempt from charge if the buyer is a charity and the qualifying conditions are met.
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VALID FROM 01/04/2015

*Qualifying conditions*

- 2 The qualifying conditions are—
- (a) that the buyer intends to hold—
    - (i) the subject-matter of the transaction, or
    - (ii) the greater part of that subject-matter, for qualifying charitable purposes, and
  - (b) that the transaction has not been entered into for the purpose of avoiding the tax (whether by the buyer or any other person).

VALID FROM 01/04/2015

*Qualifying charitable purposes*

- 3 A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it—
- (a) for use in the furtherance of the charitable purposes of the buyer or of another charity, or
  - (b) as an investment from which the profits are applied to the charitable purposes of the buyer.

VALID FROM 01/04/2015

*Withdrawal of relief*

- 4 Relief under this schedule is withdrawn, or partially withdrawn, if—
- (a) a disqualifying event occurs—
    - (i) before the end of the period of 3 years beginning with the effective date of the transaction which was exempt from charge under this schedule (“the relevant transaction”), or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and
  - (b) at the time of the disqualifying event the buyer holds a chargeable interest—
    - (i) that was acquired by the buyer under the relevant transaction, or
    - (ii) that is derived from an interest so acquired.
- 5 A “disqualifying event” means—
- (a) the buyer ceasing to be established for charitable purposes only, or
  - (b) the subject-matter of the relevant transaction, or any interest or right derived from it, being held or used by the buyer otherwise than for qualifying charitable purposes.
- 6 Where the relevant transaction is exempt from charge by virtue of qualifying condition (a)(ii), the following are also disqualifying events—

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	<ul style="list-style-type: none"> <li>(a) any transfer by the buyer of a major interest in the whole or any part of the subject-matter of the relevant transaction, or</li> <li>(b) any grant by the buyer at a premium of a low-rental lease of the whole or any part of that subject-matter,</li> </ul> <p>that is not made for the charitable purposes of the buyer.</p>
7	<p>A lease—</p> <ul style="list-style-type: none"> <li>(a) is granted “at a premium” if there is consideration other than rent, and</li> <li>(b) is a “low-rental” lease if the annual rent (if any) is less than £1,000 a year.</li> </ul>
8	Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the relevant transaction but for the relief.
9	Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the tax that would have been chargeable but for the relief.
10	<p>An “appropriate proportion” means an appropriate proportion having regard to—</p> <ul style="list-style-type: none"> <li>(a) what was acquired by the buyer under the relevant transaction and what is held by the buyer at the time of the disqualifying event, and</li> <li>(b) the extent to which what is held by the buyer at that time becomes used or held for purposes other than qualifying charitable purposes.</li> </ul>
11	<p>In relation to a transfer or grant that is, by virtue of paragraph 6, a disqualifying event—</p> <ul style="list-style-type: none"> <li>(a) the date of the event for the purposes of paragraph 4 is the effective date of the transfer or grant,</li> <li>(b) paragraph 4(b) has effect as if, for “at the time” there were substituted “immediately before”,</li> <li>(c) paragraph 10 has effect as if— <ul style="list-style-type: none"> <li>(i) in paragraph (a), for “at the time of” there were substituted “immediately before and immediately after”,</li> <li>(ii) paragraph (b) were omitted.</li> </ul> </li> </ul>

VALID FROM 01/04/2015

### *Charitable trusts*

12	This schedule applies in relation to a charitable trust as it applies to a charity.
13	<p>“Charitable trust” means—</p> <ul style="list-style-type: none"> <li>(a) a trust of which all the beneficiaries are charities, or</li> <li>(b) a unit trust scheme in which all the unit holders are charities.</li> </ul>
14	<p>In this schedule as it applies in relation to a charitable trust—</p> <ul style="list-style-type: none"> <li>(a) references to the buyer in paragraph 3(a) and (b) are to the beneficiaries or unit holders, or any of them,</li> <li>(b) the reference to the buyer in paragraph 5(a) is to any of the beneficiaries or unit holders,</li> </ul>

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Land and Buildings Transaction Tax (Scotland) Act 2013. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (c) the reference in paragraph 6 to the charitable purposes of the buyer is to those of the beneficiaries or unit holders, or any of them.

### Interpretation

- 15 (1) In this schedule, “charity” means—
- (a) a body registered in the Scottish Charity Register, or
  - (b) a body which is—
    - (i) established under the law of a relevant territory,
    - (ii) managed or controlled wholly or mainly outwith Scotland, and
    - (iii) meets at least one of the conditions in sub-paragraph (2).
- (2) The conditions are—
- (a) the body is registered in a register corresponding to the Scottish Charity Register,
  - (b) the body's purposes consist only of one or more of the charitable purposes.
- (3) A relevant territory is—
- (a) England and Wales,
  - (b) Northern Ireland,
  - (c) a member State of the European Union other than the United Kingdom, or
  - (d) a territory specified in regulations made by the Scottish Ministers.

#### Commencement Information

**III** Sch. 13 para. 15 in force at 7.11.2014 for specified purposes by [S.S.I. 2014/279](#), art. 2, [Sch.](#)

VALID FROM 01/04/2015

- 16 In this schedule, "charitable purposes" has the meaning given by section 106 of the Charities and Trustee Investments (Scotland) Act 2005 (asp 10).

VALID FROM 01/04/2015

- 17 In this schedule, “annual rent” means the average annual rent over the term of the lease or, if—
- (a) different amounts of rent are payable for different parts of the term, and
  - (b) those amounts (or any of them) are ascertainable at the time of the disqualifying event,
- the average annual rent over the period for which the highest ascertainable rent is payable.

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VALID FROM 01/04/2015

**SCHEDULE 14** **S**  
*(introduced by section 27)*

**RELIEF FOR CERTAIN COMPULSORY PURCHASES**

.....

VALID FROM 01/04/2015

**SCHEDULE 15** **S**  
*(introduced by section 27)*

**RELIEF FOR COMPLIANCE WITH PLANNING OBLIGATIONS**

.....

VALID FROM 01/04/2015

**SCHEDULE 16** **S**  
*(introduced by section 27)*

**PUBLIC BODIES RELIEF**

.....

VALID FROM 01/04/2015

**SCHEDULE 17** **S**  
*(introduced by section 49)*

**PARTNERSHIPS**

.....

**Status:** Point in time view as at 01/01/2015. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Land and Buildings Transaction Tax (Scotland) Act 2013. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

VALID FROM 01/04/2015

## SCHEDULE 18 **S**

(introduced by section 50)

### TRUSTS

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## SCHEDULE 19 **S**

(introduced by section 52)

### LEASES

VALID FROM 01/04/2015

## PART 1 **S**

### INTRODUCTORY

#### *Overview*

- 1 (1) This schedule makes provision about the application of this Act in relation to leases.
- (2) It is arranged as follows—
- Part 2 makes provision for the calculation of the tax chargeable in relation to chargeable consideration which consists of rent,
  - Part 3 makes provision about the calculation of the tax chargeable in relation to other chargeable consideration,
  - Part 4 makes provision for the review of tax chargeable at periodic intervals and on certain events,
  - Part 5 makes provision about chargeable consideration in relation to leases, including consideration which consists of rent, consideration other than rent and consideration that is not treated as chargeable consideration,
  - Part 6 makes provision about duration of leases and about the application of this Act to transactions involving leases generally.

#### *Calculation of tax chargeable where chargeable consideration includes rent*

- 2 Where the chargeable consideration for a chargeable transaction to which this schedule applies consists of rent (or includes rent and chargeable consideration other than rent), the tax chargeable is the sum of—
- (a) any tax chargeable on so much of the chargeable consideration as consists of rent, and
  - (b) any tax chargeable on so much of the chargeable consideration other than rent.

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## PART 2 **S**

### AMOUNT OF TAX CHARGEABLE: RENT

#### *Tax rates and tax bands*

- 3 (1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band applicable to chargeable consideration which consists of rent.
- (2) An order under sub-paragraph (1) must specify—
- (a) a nil rate tax band and at least one other tax band,
  - (b) the tax rate for the nil rate tax band, which must be 0%, and
  - (c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.

#### **Commencement Information**

**I12** Sch. 19 para. 3 in force at 7.11.2014 by [S.S.I. 2014/279](#), art. 2, [Sch.](#)

VALID FROM 01/04/2015

#### *Amount of tax chargeable in respect of rent*

- 4 The amount of tax chargeable on so much of the chargeable consideration as consists of rent is to be determined as follows.
- Step 1* Calculate the net present value (NPV) of the rent payable over the term of the lease (see paragraph 6).
- Step 2* For each tax band, multiply so much of the NPV as falls within the band by the tax rate for that band.
- Step 3* Calculate the sum of the amounts reached under Step 2. The result is the amount of tax chargeable in respect of rent.

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#### *Amount of tax chargeable in respect of rent: linked transactions*

- 5 Where a chargeable transaction to which this schedule applies is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the amount of tax chargeable in respect of the rent is to be determined as follows.
- Step 1* Calculate the total of the net present values (TNPV) of the rent payable over the terms of all the leases (see paragraph 6).
- Step 2* For each tax band, multiply so much of the TNPV as falls within the band by the tax rate for that band.
- Step 3* Calculate the sum of the amounts reached under Step 2. The result is the total tax chargeable in respect of rent.
- Step 4* Divide the net present value of the rent payable over the term of the lease in question by the TNPV.



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*Step 5* Multiply the total tax chargeable in respect of rent by the fraction reached under Step 4. The result is the amount of tax chargeable in respect of rent for the lease in question.

VALID FROM 01/04/2015

*Net present value*

- 6 The net present value (NPV) of the rent payable over the term of a lease is calculated by applying the following formula—

VALID FROM 01/04/2015

*Temporal discount rate*

- 7 (1) For the purposes of this schedule the “temporal discount rate” is 3.5% or such other rate as may be specified by the Scottish Ministers by order.
- (2) An order under this paragraph may—
- (a) specify a rate or make provision for any such rate to be determined by reference to such rate or the average of such rates as may be referred to in the order,
  - (b) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
  - (c) provide for rates arrived at by reference to averages to be rounded up or down, and
  - (d) provide for circumstances in which alteration of a rate is or is not to take place.

VALID FROM 01/04/2015

**PART 3 S**

AMOUNT OF TAX CHARGEABLE: CONSIDERATION OTHER THAN RENT

*Amount of tax chargeable in respect of consideration other than rent: general*

- 8 (1) Where in the case of a transaction to which this schedule applies there is chargeable consideration other than rent, the provisions of this Act apply in relation to that consideration as in relation to other chargeable consideration (but see paragraph 9).
- (2) Where a transaction to which this schedule applies falls to be taken into account as a linked transaction for the purposes of section 26, no account is to be taken of rent in determining the relevant consideration.

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*Amount of tax chargeable in respect of consideration other than rent: nil rate tax band*

- 9 (1) This paragraph applies in the case of a transaction to which this schedule applies where—
- (a) there is chargeable consideration other than rent, and
  - (b) section 25 or 26 applies to the transaction.
- (2) If the relevant rent is at least £1,000, the nil rate tax band does not apply in relation to the consideration other than rent and any such consideration that would have fallen within that band is treated as falling within the next tax band.
- (3) Sub-paragraphs (4) and (5) apply if—
- (a) the transaction to which this schedule applies is one of a number of linked transactions,
  - (b) the relevant land is partly residential property and partly non-residential property, and
  - (c) the relevant rent attributable, on a just and reasonable apportionment, to the land that is non-residential property is at least £1,000.
- (4) For the purposes of determining the amount of tax chargeable under section 26 in relation to the consideration other than rent, the transactions are treated as if they were two sets of transactions, namely—
- (a) one whose subject-matter consists of all of the interests in land that is residential property, and
  - (b) one whose subject-matter consists of all of the interests in land that is non-residential property.
- (5) For that purpose, the chargeable consideration attributable to each of those separate sets of linked transactions is the chargeable consideration so attributable on a just and reasonable apportionment.
- (6) In this paragraph “the relevant rent” means—
- (a) the annual rent in relation to the transaction in question, or
  - (b) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all of those transactions.
- (7) In sub-paragraph (6) the “annual rent” means—
- (a) the average annual rent over the term of the lease, or
  - (b) if—
    - (i) different amounts of rent are payable for different parts of the term, and
    - (ii) those amounts (or any of them) are ascertainable at the effective date of the transaction,
 the average annual rent over the term for which the highest ascertainable rent is payable.
- (8) In this paragraph “relevant land” means—
- (a) the land an interest in which is the main subject-matter of the transaction,
  - (b) if the transaction in question is one of a number of linked transactions, any land an interest in which is the main subject-matter of any of those transactions.

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**PART 4 S**

## REVIEW OF TAX CHARGEABLE

*Regular review of tax chargeable*

- 10 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—
- (a) the buyer made a land transaction return, or
  - (b) where such a return was not made, the buyer made—
    - (i) a return under section 31 (return where contingency ceases or consideration ascertained),
    - (ii) a return under paragraph 20 (return where lease for fixed term continues after end of term),
    - (iii) a return under paragraph 22 (return in relation to lease for indefinite term), or
    - (iv) a return under paragraph 30 (return where transaction becomes notifiable on variation of rent or term).
- (2) The buyer must make a further return to the Tax Authority if, on a review date, the lease—
- (a) has not been assigned, or
  - (b) has not terminated (whether on the term of the lease coming to an end or otherwise).
- (3) The return must be made before the end of the period of 30 days beginning with the day after the review date.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at that review date.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (6) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.
- (7) In this paragraph, the “review date” is—
- (a) in the case of a transaction to which sub-paragraph (1)(a) applies, the day falling on the third anniversary of the effective date of the transaction and on each subsequent third anniversary of that date,
  - (b) where the return mentioned in sub-paragraph (1)(b)(i) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the event mentioned in section 31(2) occurred,
  - (c) where the return mentioned in sub-paragraph (1)(b)(ii) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the 1 year period mentioned in paragraph 20(3) ended and on each subsequent third anniversary of that date,

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- (d) where the return mentioned in sub-paragraph (1)(b)(iii) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the deemed fixed term mentioned in paragraph 22(2) ended and on each subsequent third anniversary of that date,
- (e) where the return mentioned in sub-paragraph (1)(b)(iv) is the first return made in relation to the transaction, the day falling on the third anniversary of the date the variation mentioned in paragraph 30 takes effect and on each subsequent third anniversary of that date.

*Review of tax chargeable on certain events*

- 11 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—
- (a) paragraph 10 applies, and
  - (b) the lease—
    - (i) is assigned, or
    - (ii) terminates (whether on the term of the lease coming to an end or otherwise).
- (2) The buyer must make a further return to the Tax Authority.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the day (the “relevant day”) on which the lease is assigned or terminated.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at the relevant day.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (6) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.

VALID FROM 01/04/2015

**PART 5 S**

CHARGEABLE CONSIDERATION: RENT AND CONSIDERATION OTHER THAN RENT

*Rent*

- 12 (1) For the purposes of this Act, a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, is to be treated as entirely rent.
- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of schedule 2 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

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*Variable or uncertain rent*

- 13 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—
- (a) varies in accordance with provision in the lease, or
  - (b) is contingent, uncertain or unascertained.
- (2) The provisions of this Act apply as in relation to other chargeable consideration and accordingly the provisions of sections 18 and 19 apply if the amount is contingent, uncertain or unascertained.
- (3) But section 20(b) does not apply.
- (4) For the purposes of this paragraph, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—
- (a) section 13, 14, 15 or 31 of the Agricultural Holdings (Scotland) Act 1991 (c.55), or
  - (b) section 9, 10 or 11 of the Agricultural Holdings (Scotland) Act 2003 (asp 11).
- (5) No account is to be taken for the purposes of this paragraph of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index.

*Reverse premium*

- 14 (1) In the case of the grant, assignation or renunciation of a lease a reverse premium does not count as chargeable consideration.
- (2) A “reverse premium” means—
- (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant,
  - (b) in relation to the assignation of a lease, a premium moving from the assignor to the assignee,
  - (c) in relation to the renunciation of a lease, a premium moving from the tenant to the landlord.

*Tenant's obligations etc. that do not count as chargeable consideration*

- 15 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—
- (a) any undertaking by the tenant to repair, maintain or insure the leased premises,
  - (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord's costs of management,
  - (c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market,
  - (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease,
  - (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease,

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- (f) any other obligation of the tenant to bear the landlord's reasonable costs or expenses of or incidental to the grant of a lease,
  - (g) any obligation under the lease to transfer to the landlord, on the termination of the lease, payment entitlements granted to the tenant under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation ( EC ) No. 73/2009 ) in respect of the land subject to the lease).
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of any such obligations as in mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the renunciation of the lease.

#### Commencement Information

**I13** Sch. 19 para. 15 in force at 1.4.2015 by [S.S.I. 2015/108](#) , [art. 2](#)

#### *Assignment of lease: assumption of obligations by assignee*

- 16 In the case of an assignment of a lease the assumption by the assignee of the obligation—
- (a) to pay rent, or
  - (b) to perform or observe any other undertaking of the tenant under the lease,
- does not count as chargeable consideration for the assignment.

#### *Loan or deposit in connection with grant or assignment of lease*

- 17 (1) Where, under arrangements made in connection with the grant of a lease—
- (a) a tenant, or any person connected with or acting on behalf of the tenant, pays a deposit, or makes a loan, to any person, and
  - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the tenant or on the death of the tenant,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the grant of the lease.
- (2) Where, under arrangements made in connection with the assignment of a lease—
- (a) the assignee, or any person connected with or acting on behalf of the assignee, pays a deposit, or makes a loan, to any person, and
  - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee or on the death of the assignee,
- the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the assignment of the lease.
- (3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or (as the case requires) assignment of the lease is not more than twice the relevant maximum rent.
- (4) The relevant maximum rent is—

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- (a) in relation to the grant of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease,
- (b) in relation to the assignation of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease remaining outstanding as at the date of the assignation.
- (5) In determining the highest amount of rent for the purposes of sub-paragraph (4), take into account (if necessary) any amounts determined by virtue of paragraph 13(2) but disregard paragraph 24(2) (deemed reduction of rent, where further lease granted, for periods during which rents overlap).
- (6) Tax is not chargeable by virtue of this paragraph merely because of paragraph 9 (which excludes the nil rate tax band in cases where the relevant rent attributable to non-residential property is not less than £1,000 a year).
- Renunciation of existing lease in return for new lease*
- 18 (1) Where a lease is granted in consideration of the renunciation of an existing lease between the same parties—
- (a) the grant of the new lease does not count as chargeable consideration for the renunciation, and
- (b) the renunciation does not count as chargeable consideration for the grant of the new lease.
- (2) Paragraph 5 (exchanges) of schedule 2 (chargeable consideration) does not apply in such a case.

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## PART 6 S

### OTHER PROVISION ABOUT LEASES

#### *Meaning of lease for a fixed term*

- 19 In the application of this schedule to a lease for a fixed term, no account is to be taken of—
- (a) any contingency as a result of which the lease may terminate before the end of the fixed term, or
- (b) any right of either party to terminate the lease or renew it.

#### *Leases that continue after a fixed term*

- 20 (1) This paragraph applies to—
- (a) a lease for a fixed term and thereafter until terminated, or
- (b) a lease for a fixed term that may continue beyond the fixed term by operation of law.
- (2) For the purposes of this Act (except section 30 (notifiable transactions)), a lease to which this paragraph applies is treated—



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- (a) in the first instance as if it were a lease for the original fixed term and no longer,
- (b) if the lease continues after the end of that term, as if it were a lease for a fixed term of 1 year longer than the original fixed term,
- (c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term 2 years longer than the original fixed term,

and so on.

(3) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of 1 year after the end of a fixed term is that the transaction becomes notifiable—

- (a) the buyer must make a return in respect of that transaction before the end of the period of 30 days beginning with the day after the end of that 1 year period,
- (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
- (c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

(4) Sub-paragraph (3) is subject to paragraph 21.

(5) For the purposes of section 30 (notifiable transactions), a lease to which this paragraph applies is a lease for its original fixed term.

(6) Where—

- (a) a lease would be treated as continuing for a period (or further period) of 1 year under sub-paragraph (2), but
- (b) (ignoring that sub-paragraph) the lease actually terminates at a time during that period,

the lease is to be treated as continuing under sub-paragraph (2) only until that time; and the references in sub-paragraph (3) to that 1 year period are accordingly to be read as references to so much of that year as ends with that time.

*Leases that continue after a fixed term: grant of new lease*

21 (1) This paragraph applies where—

- (a) (ignoring this paragraph) paragraph 20 would apply to treat a lease (“the original lease”) as if it were a lease for a fixed term 1 year longer than the original term,
- (b) during that 1 year period the tenant under that lease is granted a new lease of the same or substantially the same premises, and
- (c) the term of the new lease begins during that 1 year period.

(2) Paragraph 20 does not apply to treat the lease as continuing after the original fixed term.

(3) The term of the new lease is treated for the purposes of this Act as beginning immediately after the original fixed term.



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- (4) Any rent which, in the absence of this paragraph, would be payable under the original lease in respect of that 1 year period is to be treated as payable under the new lease.
- (5) Where the fixed term of a lease has previously been extended (on one or more occasions) under paragraph 20, this paragraph applies as if references to the original term were references to the fixed term as previously so extended.

*Treatment of leases for indefinite term*

- 22 (1) For the purposes of this Act (except section 30 (notifiable transactions))—
- (a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of 1 year,
  - (b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of 2 years,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of 3 years,
- and so on.
- (2) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that the transaction becomes notifiable—
- (a) the buyer must make a return in respect of that transaction before the end of the period of 30 days after the end of that term,
  - (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
  - (c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (3) For the purposes of section 30 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than 7 years.
- (4) References in this paragraph to a lease for an indefinite term include an interest or right terminable by a period of notice or by notice at any time.

*Treatment of successive linked leases*

- 23 (1) This paragraph applies where—
- (a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
  - (b) those grants are linked transactions.
- (2) This Act applies as if the series of leases were a single lease—
- (a) granted at the time of the grant of the first lease in the series,
  - (b) for a term equal to the aggregate of the terms of all the leases, and
  - (c) in consideration of the rent payable under all of the leases.
- (3) The grant of later leases in the series is accordingly disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).

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*Rent for overlap period in case of grant of further lease*

- 24 (1) This paragraph applies where—
- (a) A renounces an existing lease to B (“the old lease”) and in consideration of that renunciation B grants a lease to A of the same or substantially the same premises (“the new lease”),
  - (b) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in the tenant's original lease (“the old lease”) in pursuance of a contractual entitlement arising in the event of the head lease being terminated, or
  - (c) a person who has guaranteed the obligations of a tenant under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.
- (2) For the purposes of this Act the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.
- (3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.
- (4) The rent that would have been payable under the old lease is to be taken to be the amount taken into account in determining the tax chargeable in respect of the acquisition of the old lease.
- (5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

*Agreement for lease substantially performed etc.*

- 25 (1) Where—
- (a) there is an agreement (including missives not constituting a lease) under which a lease is to be executed, and
  - (b) the agreement is substantially performed without a lease having been executed,
- 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 the substantial performance.
- (2) The effective date of the transaction is when the agreement is substantially performed.
- (3) Where sub-paragraph (1) applies and at some later time a lease (“the actual lease”) is executed, this Act applies as if the notional lease were a lease granted—
- (a) on the date the agreement was substantially performed,
  - (b) for a term which begins with that date and ends at the end of the term of the actual lease, and
  - (c) in consideration of the total rent payable over that term and any other consideration given for the agreement or the actual lease.

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- (4) Where sub-paragraph (3) applies the grant of the actual lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).
- (5) For the purposes of section 34—
  - (a) the grant of the notional lease and the grant of the actual lease are linked (whether or not they would be linked by virtue of section 57),
  - (b) the tenant under the actual lease (rather than the tenant under the notional lease) is liable for any tax or additional tax payable in respect of the notional lease as a result of sub-paragraph (3), and
  - (c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the notional lease, as a reference to the tenant under the actual lease.
- (6) 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 is to be (to that extent) repaid by the Tax Authority.
- (7) That repayment must be claimed by amendment of the return made in respect of the agreement.
- (8) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the agreement.

*Missives of let followed by execution of formal lease*

- 26
- (1) Where a lease is constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”), the first lease is treated as if it were a lease granted—
    - (a) on the date the missives of let were concluded,
    - (b) for a term which begins with that date and ends at the end of the term of the second lease, and
    - (c) in consideration of the total rent payable over that term and any other consideration given for the first lease or the second lease.
  - (2) Where sub-paragraph (1) applies the grant of the second lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).
  - (3) Section 63 (read with section 64) makes provision for the effective dates in relation to the first lease and the second lease.
  - (4) For the purposes of section 34—
    - (a) the grant of the first lease and the grant of the second lease are linked (whether or not they would be linked by virtue of section 57),
    - (b) the tenant under the second lease (rather than the tenant under the first lease) is liable for any tax or additional tax payable in respect of the first lease as a result of sub-paragraph (1), and
    - (c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the first lease, as a reference to the tenant under the second lease.

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- (5) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the missives of let.

*Cases where assignment of lease treated as grant of lease*

- 27 (1) This paragraph applies where the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3).
- (2) The first assignment of the lease that is not exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Act as if it were the grant of a lease by the assignor—
- (a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and
  - (b) on the same terms as those on which the assignee holds that lease after the assignment.
- (3) The provisions are—
- (a) schedule 3 (sale and leaseback relief),
  - (b) schedule 8 (relief for alternative finance investment bonds),
  - (c) schedule 10 (group relief),
  - (d) schedule 11 (reconstruction relief and acquisition relief),
  - (e) schedule 13 (charities relief),
  - (f) schedule 16 (public bodies relief).
- (4) This paragraph does not apply where the relief in question is group relief, reconstruction relief, acquisition relief or charities relief and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignment.
- (5) For the purposes of sub-paragraph (4), “disqualifying event” means—
- (a) in relation to the withdrawal of group relief, the event falling within paragraphs 14 and 15 of schedule 10 (purchaser ceasing to be a member of the same group as the seller), as read with paragraphs 32 to 40 of that schedule,
  - (b) in relation to the withdrawal of reconstruction relief or acquisition relief, the change in control of the acquiring company mentioned in paragraphs 13 and 14 of schedule 11 or, as the case may be, the event mentioned in paragraphs 22 to 24 or 25 to 28 of that schedule,
  - (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 5 or 6 of schedule 13.

*Assignment of lease: responsibility of assignee for returns etc.*

- 28 (1) Where a lease is assigned, anything that but for the assignment would be required or authorised to be done by or in relation to the assignor under or by virtue of any provision mentioned in sub-paragraph (2) must, if the event giving rise to the adjustment or return occurs after the effective date of the assignment, be done instead by or in relation to the assignee.
- (2) The provisions are—
- (a) section 31 (return where contingency ceases or consideration ascertained),

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- (b) section 34 (return or further return in consequence of later linked transaction),
  - (c) paragraph 10 of this schedule (return on 3-yearly review),
  - (d) paragraph 11 of this schedule (return on assignation or termination of lease),
  - (e) paragraph 20 of this schedule (return or further return where lease for fixed term continues after end of term),
  - (f) paragraph 22 of this schedule (return or further return in relation to lease for indefinite term),
  - (g) paragraph 30 of this schedule (return where transaction becomes notifiable on variation of rent or term).
- (3) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor is to be treated as if it had been done by or in relation to the assignee.
- (4) This paragraph does not apply if the assignation falls to be treated as the grant of a lease by the assignor (see paragraph 27).

*Reduction of rent or term or other variation of lease*

- 29 (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.
- (2) Where any consideration in money or money's worth (other than an increase in rent) is given by the tenant for any variation of a lease, other than a variation of the amount of the rent or of the term of the lease, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.
- (3) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the landlord.

*Increase of rent or term: notification*

- 30 (1) This paragraph applies where, in relation to a land transaction in respect of a lease which was not notifiable under section 30 (notifiable transactions)—
- (a) the lease is varied so as to—
    - (i) extend its term, or
    - (ii) increase the amount of rent, and
  - (b) the effect of the variation is that the transaction would have been notifiable under section 30 had it been a lease for that term as so extended or for that rent as so increased (whether or not the effect of the variation is also that tax is payable in respect of the transaction where none was payable before).
- (2) Where this paragraph applies—
- (a) the buyer must make a return in respect of the transaction before the end of the period of 30 days beginning with the day after the relevant date,
  - (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
  - (c) any tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

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- (3) The “relevant date” is the date from which the variation takes effect.
- (4) For the purposes of section 30—
- (a) a lease to which sub-paragraph (1)(a)(i) applies is a lease for whatever is its term as so extended, and
  - (b) a lease to which sub-paragraph (1)(a)(ii) applies is a lease for whatever is its rent as so increased.

VALID FROM 01/04/2015

SCHEDULE 20 **S**

(introduced by section 66)

INDEX OF DEFINED EXPRESSIONS

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