



# Finance Act 2002

## 2002 CHAPTER 23

### PART 4

#### STAMP DUTY AND STAMP DUTY RESERVE TAX

##### *Stamp duty*

#### **110 Land in disadvantaged areas**

- (1) In subsection (1) of section 92 of the Finance Act 2001 (c. 9) (stamp duty: exemption for land in disadvantaged areas), for the words before paragraph (a) substitute “No *ad valorem* stamp duty shall be chargeable on—”.
- (2) After subsection (6) of that section insert—

“(6A) This section and Schedule 30 to this Act have effect subject to section 92A.”
- (3) After that section insert—

#### **“92A Restriction of exemption in the case of residential property etc**

- (1) Regulations may provide for an exemption conferred by section 92 or by Schedule 30 to this Act not to apply in cases specified by reference to either or both of the following—
  - (a) whether the land in question is residential property;
  - (b) the amount or value of the consideration.
- (2) Regulations may contain provision corresponding to or modifying that made by Schedule 30 to this Act in the case of—
  - (a) a building or land only part of which falls within subsection (1)(a) or (b) of section 92B (meaning of “residential property”), or
  - (b) an interest in or right over land that subsists only partly as mentioned in subsection (1)(c) of that section.

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(3) Where by virtue of regulations under this section the availability of an exemption depends on the land in question not being, or not being entirely, residential property, the certification under section 92(2) must include a statement that the land is not residential property or, as the case may be, that it is not residential property to the extent stated.

(4) Where by virtue of regulations under this section the availability of an exemption depends on the amount or value of the consideration not exceeding a specified amount, the instrument in question must be certified at that amount (or at a lower amount).

The reference here to an instrument being certified at an amount shall be construed in accordance with paragraph 6 of Schedule 13 to the Finance Act 1999 (as if the reference were contained in paragraph 4 of that Schedule).

(5) The power to make regulations under this section is exercisable by the Treasury.

(6) Regulations under this section—

- (a) may make different provision for different cases, and
- (b) may contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient.

(7) Regulations under this section must be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.

### **92B Meaning of “residential property”**

(1) In section 92A “residential property” means—

- (a) a building that is used or 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 structure on such land);
- (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) For the purposes of subsection (1) use of a building as—

- (a) residential accommodation for school pupils,
- (b) residential accommodation for students, other than accommodation falling within subsection (3)(b),
- (c) residential accommodation for members of any of the armed forces, or
- (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 (3),

is use of a building as a dwelling.

(3) For the purposes of subsection (1) use of a building as—

- (a) a home or other institution providing residential accommodation for children,

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- (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, disablement, 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, or
  - (f) a hotel or inn or similar establishment,is not use of a building as a dwelling.
- (4) Where a building is used in a manner specified in subsection (3), no account shall be taken for the purposes of subsection (1)(a) of its suitability for any other use.
- (5) Where a building that is not in use is suitable for at least one of the uses specified in subsection (2) and at least one of those specified in subsection (3)
  - (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 subsection, no account shall be taken for the purposes of subsection (1)(a) of its suitability for any other use;
  - (b) otherwise, the building shall be treated for those purposes as suitable for use as a dwelling.
- (6) Regulations under section 92A may provide that, where there is a single contract for the conveyance, transfer or lease of land comprising or including six or more separate dwellings, none of that land counts as residential property for the purposes of the regulations.
- (7) The Treasury may by order amend this section so as to change or clarify the cases where use of a building is, or is not, use of a building as a dwelling for the purposes of subsection (1).
- (8) An order under subsection (7) may contain such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient.
- (9) An order under subsection (7) must be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of the House of Commons.
- (10) In this section “building” includes part of a building.”.
- (4) In paragraph 1(1) of Schedule 30 to the Finance Act 2001 (c. 9) (stamp duty reduced for land partly in a disadvantaged area), for the words from “stamp duty” to “1999” substitute “*ad valorem stamp duty*”.
- (5) In sub-paragraph (1) of paragraph 3 of that Schedule (certification of instruments for stamp duty purposes)—
  - (a) for the words from “a transaction” to “shall be disregarded” substitute “a conveyance, transfer or lease is exempted from stamp duty by section 92(1) or paragraph 1 above (read with section 92A) the transaction in question shall be disregarded”;
  - (b) at the end of the sub-paragraph insert—

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“This is without prejudice to section 92A(4) (instrument must be certified where exemption depends on amount or value of consideration).”.

- (6) Regulations under section 92A of the Finance Act 2001 (inserted by subsection (3) above) may contain provision revoking the Variation of Stamp Duties Regulations 2001 (S.I. 2001/3746) (which provide for section 92(1) of, and paragraph 1 of Schedule 30 to, that Act not to apply in cases where the consideration for the conveyance etc exceeds £150,000).

## 111 Withdrawal of group relief

- (1) This section applies where—
- (a) an instrument (“the relevant instrument”) transferring land in the United Kingdom from one company (“the transferor company”) to another (“the transferee company”) has been stamped on the basis that group relief applies,
  - (b) before the end of the period of two years beginning with the date on which the instrument was executed the transferee company ceases to be a member of the same group as the transferor company, and
  - (c) at the time when it ceases to be a member of the same group as the transferor company it holds an estate or interest in land—
    - (i) that was transferred to it by the relevant instrument, or
    - (ii) that is derived from an estate or interest that was so transferred,
 and that was not subsequently transferred to it by a duly stamped instrument for which group relief was not claimed.
- (2) In those circumstances—
- (a) group relief in relation to the relevant instrument, or an appropriate proportion of it, is withdrawn, and
  - (b) the stamp duty that would have been payable on stamping the relevant instrument but for group relief if the estate or interest in land transferred by that instrument had been transferred at market value, or an appropriate proportion of the duty that would have been so paid, is payable by the transferee company within 30 days after that company ceases to be a member of the same group as the transferor company.
- (3) In subsection (2)(a) and (b) “an appropriate proportion” means an appropriate proportion having regard to what was transferred by the relevant instrument and what the transferee company holds at the time it ceases to be a member of the same group as the transferor company.
- (4) In this section “group relief” means relief under any of the following provisions—
- (a) section 42 of the Finance Act 1930 (c. 28) or section 11 of the Finance Act (Northern Ireland) 1954 (c. 23 (N.I.)) (transfer of property between associated bodies corporate);
  - (b) section 151 of the Finance Act 1995 (c. 4) (leases etc between associated bodies corporate).
- (5) In this section—
- (a) references to the transfer of land include the grant or surrender of an estate or interest in or over land;
  - (b) “company” includes any body corporate; and

- (c) references to a company being in the same group as another company are to the companies being associated bodies corporate within the meaning of the relevant group relief provision.
- (6) Schedule 34 to this Act contains provisions supplementing this section.
- (7) Where the relevant instrument transfers land in the United Kingdom together with other property, the provisions of this section and of Schedule 34 apply as if there were two separate instruments, one relating to land in the United Kingdom and the other relating to other property.
- (8) This section applies where the relevant instrument is executed after 23rd April 2002.
- (9) But this section does not apply to an instrument giving effect to a contract made on or before 17th April 2002, unless—
  - (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date.
- (10) This section shall be deemed to have come into force on 24th April 2002.

## **112 Restriction of relief for company acquisitions**

- (1) Section 76 of the Finance Act 1986 (c. 41) (relief where company acquires the whole or part of the undertaking of another company) is amended as follows.
- (2) In subsection (2) for “the condition mentioned in subsection (3) below” substitute “the first and second conditions (as defined below)”.
- (3) In subsection (3) for “The condition” substitute “The first condition”.
- (4) After subsection (3) insert—
  - “(3A) The second condition applies only in relation to an instrument transferring land in the United Kingdom and is 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.
  - (3B) Where an instrument transfers land in the United Kingdom together with other property, the provisions of this section apply as if there were two separate instruments, one relating to land in the United Kingdom and the other relating to other property.”
- (5) In subsection (5) for “subsection (2) above” (twice) substitute “this section”.
- (6) After subsection (6) insert—
  - “(6A) For the purposes of subsection (3A) above—
    - (a) companies are associated if one has control of the other or both are controlled by the same person or persons, and
    - (b) “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

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The references in paragraph (a) above to control shall be construed in accordance with section 416 of the Taxes Act 1988.”.

- (7) This section applies to instruments executed after 23rd April 2002.
- (8) But this section does not apply to an instrument giving effect to a contract made on or before 17th April 2002, unless—
  - (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date.
- (9) This section shall be deemed to have come into force on 24th April 2002.

### **113 Withdrawal of relief for company acquisitions**

- (1) This section applies where—
  - (a) an instrument (“the relevant instrument”) transferring land in the United Kingdom from one company to another company (“the acquiring company”) has been stamped on the basis that relief under section 76 of the Finance Act 1986 (c. 41) (“section 76 relief”) applies,
  - (b) before the end of the period of two years beginning with the date on which the instrument was executed control of the acquiring company changes, and
  - (c) at the time control of that company changes the acquiring company holds an estate or interest in land—
    - (i) that was transferred to it by the relevant instrument, or
    - (ii) that is derived from an estate or interest so transferred,
 and that was not subsequently transferred to it by a duly stamped instrument on which *ad valorem* duty was paid and in relation to which section 76 relief was not claimed.
- (2) In those circumstances—
  - (a) section 76 relief in relation to the relevant instrument, or an appropriate proportion of it, is withdrawn, and
  - (b) the additional stamp duty that would have been payable on stamping the relevant instrument but for section 76 relief if the estate or interest in land transferred by that instrument had been transferred at market value, or an appropriate proportion of that additional duty, is payable by the acquiring company within 30 days after control of that company changes.
- (3) In subsection (2)(a) and (b) “an appropriate proportion” means an appropriate proportion having regard to what was transferred by the relevant instrument and what the acquiring company holds at the time control of it changes.
- (4) In this section—
  - (a) references to the transfer of land include the grant or surrender of an estate or interest in or over land;
  - (b) “control” shall be construed in accordance with section 416 of the Taxes Act 1988; and
  - (c) references to control of a company changing are to the company becoming controlled—

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- (i) by a different person,
  - (ii) by a different number of persons, or
  - (iii) 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.
- (5) Schedule 35 to this Act contains provisions supplementing this section.
- (6) Where the relevant instrument transfers land in the United Kingdom together with other property, the provisions of this section and of Schedule 35 apply as if there were two separate instruments, one relating to land in the United Kingdom and the other relating to other property.
- (7) This section applies where the relevant instrument is executed after 23rd April 2002.
- (8) But this section does not apply to an instrument giving effect to a contract made on or before 17th April 2002, unless—
- (a) the instrument is made in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
  - (b) the instrument transfers the property in question to, or vests it in, a person other than the purchaser under the contract because of an assignment (or, in Scotland, assignation) or further contract made after that date.
- (9) This section shall be deemed to have come into force on 24th April 2002.

#### **114 Penalties for late stamping**

- (1) Section 15B of the Stamp Act 1891 (c. 39) (late stamping: penalties) is amended as follows.
- (2) In subsection (1)—
- (a) in paragraph (a) (penalty where instrument not stamped within 30 days of execution), after “is executed in the United Kingdom” insert “or relates to land in the United Kingdom”;
  - (b) in paragraph (b) (penalty where instrument not stamped within 30 days of instrument being first received in the United Kingdom), after “is executed outside the United Kingdom” insert “and does not relate to land in the United Kingdom”.
- (3) After that subsection insert—
- “(1A) For the purposes of subsection (1) every instrument that (whether or not it also relates to any other transaction) relates to a transaction which to any extent involves land in the United Kingdom is an instrument relating to land in the United Kingdom.”.
- (4) This section applies in relation to instruments executed on or after the day on which this Act is passed.

#### **115 Contracts for the sale of an estate or interest in land chargeable as conveyances**

- (1) This section applies to a contract or agreement for the sale of an estate or interest in land in the United Kingdom where—
- (a) the amount or value of the consideration exceeds £10 million, or

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- (b) the instrument forms part of a larger transaction or series of transactions in respect of which the amount or value, or aggregate amount or value, of the consideration exceeds £10 million.
- (2) If, in the case of such a contract or agreement that is not otherwise chargeable to stamp duty, a conveyance or transfer made in conformity with the contract or agreement is not presented to the Commissioners for stamping with the *ad valorem* duty chargeable on it—
- (a) within the period of 90 days after the execution of the contract or agreement, or
  - (b) within such longer period as the Commissioners may think reasonable in the circumstances of the case,
- the contract or agreement shall be chargeable with the same *ad valorem* duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate or interest contracted or agreed to be sold.
- (3) The Commissioners—
- (a) may refuse to allow a longer period unless they are provided with a copy of the contract or agreement and such other evidence as they may reasonably require as to the facts and circumstances relevant to their decision,
  - (b) may allow a longer period subject to compliance with such conditions as they think fit, and
  - (c) shall not allow any longer period if it appears to them that the whole, or substantially the whole, of the intended consideration has been paid or transferred.
- (4) Where an instrument to which this section applies is presented for stamping before the end of the period mentioned in subsection (2)—
- (a) any adjudication to the effect that stamp duty is not chargeable does not affect the operation of this section, and
  - (b) the fact that duty may be chargeable under this section may be denoted on the instrument in such manner as the Commissioners think fit.
- (5) Where an instrument is chargeable with duty under this section—
- (a) section 14(4) of the Stamp Act 1891 (c. 39) (inadmissibility of unstamped instruments) does not apply in relation to it until after the end of the period mentioned in subsection (2) above, and
  - (b) sections 15A and 15B of that Act (late stamping: interest and penalties), apply in relation to it as if it had been executed at the end of that period.
- (6) The *ad valorem* duty paid upon a contract or agreement under this section shall be repaid by the Commissioners if the contract or agreement is afterwards rescinded or annulled or is for any other reason not substantially performed or carried into effect.
- (7) Schedule 36 contains provisions supplementing this section.
- (8) This section and that Schedule apply to contracts or agreements executed after the day on which this Act is passed.

## **116 Abolition of duty on instruments relating to goodwill**

- (1) No stamp duty is chargeable on an instrument for the sale, transfer or other disposition of goodwill.



- (2) Schedule 37 to this Act contains provisions supplementing this section.
- (3) This section and that Schedule shall be construed as one with the Stamp Act 1891 (c. 39).
- (4) This section applies to instruments executed on or after 23rd April 2002.
- (5) This section shall be deemed to have come into force on that date.

*Stamp duty and stamp duty reserve tax*

**117 Power to extend exceptions relating to recognised exchanges**

- (1) The Treasury may by regulations extend the application of the provisions mentioned in subsection (2) to any market (specified by name or by description) that is not a recognised exchange but is prescribed by order under section 118(3) of the Financial Services and Markets Act 2000 (c. 8).
- (2) The provisions referred to in subsection (1) are—  
sections 80A and 80C of the Finance Act 1986 (c. 41) (stamp duty: exceptions for sales to intermediaries and for repurchases and stock lending); and  
sections 88A and 89AA of that Act (stamp duty reserve tax: exceptions for intermediaries and for repurchases and stock lending).
- (3) In subsection (1) “recognised exchange” means an EEA exchange, a recognised foreign exchange or a recognised foreign options exchange within the meaning of the provisions mentioned in subsection (2).
- (4) Regulations under this section may provide for the application of the provisions mentioned in subsection (2) subject to any adaptations appearing to the Treasury to be necessary or expedient.
- (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.