

SCHEDULES

SCHEDULE 11

Section 79

STAMP DUTY LAND TAX: SELF-CERTIFICATES

PART 1

GENERAL

Introductory

- 1 In this Schedule—
- (a) references to a self-certificate are to a certificate by the purchaser that no land transaction return is required in respect of the transaction, and
 - (b) references to the date on which a self-certificate was produced are to the date on which it was produced to the registrar (in Scotland, to the Keeper of the Registers of Scotland).

Form and contents of self-certificate

- 2 (1) A self-certificate must—
- (a) be in the prescribed form,
 - (b) contain the prescribed information, and
 - (c) include a declaration by the purchaser (or each of them) that the certificate is to the best of his knowledge correct and complete.
- (2) In sub-paragraph (1) “prescribed” means prescribed by regulations made by the Inland Revenue.
- (3) The regulations may make different provision for different kinds of self-certificate.

Tax-related penalty for fraud or negligence

- 3 (1) A person who—
- (a) fraudulently or negligently gives a self-certificate in respect of a chargeable transaction, or
 - (b) discovers that a transaction in respect of which he has given a self-certificate (neither fraudulently nor negligently) is a chargeable transaction and does not remedy the error without unreasonable delay,
- is liable to a tax-related penalty.
- (2) The penalty is an amount not exceeding the amount of tax chargeable in respect of the transaction.

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PART 2

DUTY TO KEEP AND PRESERVE RECORDS

Duty to keep and preserve records

- 4 (1) A purchaser who may be required to give a self-certificate must—
- (a) keep such records as may be needed to enable him to deliver a correct and complete certificate, and
 - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved for six years after the effective date of the transaction and until any later date on which—
- (a) an enquiry into the certificate is completed, or
 - (b) if there is no enquiry, the Inland Revenue no longer have power to enquire into the certificate.
- (3) The records required to be kept and preserved under this paragraph include—
- (a) relevant instruments relating to the transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents;
 - (b) records of relevant payments, receipts and financial arrangements.

Preservation of information instead of original records

- 5 (1) The duty under paragraph 4 to preserve records may be satisfied by the preservation of the information contained in them.
- (2) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.

Penalty for failure to keep and preserve records

- 6 (1) A person who fails to comply with paragraph 4 in relation to a transaction is liable to a penalty not exceeding £3,000, subject to the following exception.
- (2) No penalty is incurred if the Inland Revenue are satisfied that any facts that they reasonably require to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to them.

PART 3

ENQUIRY INTO SELF-CERTIFICATE

Notice of enquiry

- 7 (1) The Inland Revenue may enquire into a self-certificate if they give notice of their intention to do so (“notice of enquiry”)—
- (a) to the purchaser,
 - (b) before the end of the enquiry period.

- (2) The enquiry period is the period of nine months after the date on which the self-certificate was produced.
- (3) A self-certificate that has been the subject of one notice of enquiry may not be the subject of another.

Scope of enquiry

- 8 An enquiry extends to anything contained in the certificate, or required to be contained in the certificate, that relates—
- (a) to the question whether the transaction to which the certificate relates is chargeable or notifiable, or
 - (b) to the amount of tax chargeable in respect of it.

Notice to produce documents etc for purposes of enquiry

- 9 (1) If the Inland Revenue give notice of enquiry into a self-certificate, they may by notice in writing require the purchaser—
- (a) to produce to them such documents in his possession or power, and
 - (b) to provide them with such information, in such form,
- as they may reasonably require for the purposes of the enquiry.
- (2) A notice under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which the purchaser is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
- (a) the copies must be photographic or other facsimiles, and
 - (b) the Inland Revenue may by notice require the original to be produced for inspection.

A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the purchaser is to comply with it.

- (4) The Inland Revenue may take copies of, or make extracts from, any documents produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige the purchaser to produce documents or provide information relating to the conduct of—
- (a) any pending appeal by him, or
 - (b) any pending referral to the Special Commissioners under paragraph 12 to which he is a party.

Appeal against notice to produce documents etc

- 10 (1) An appeal may be brought against a requirement imposed by a notice under paragraph 9 to produce documents or provide information.
- (2) Notice of appeal must be given—
- (a) in writing,
 - (b) within 30 days after the issue of the notice appealed against,

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- (c) to the officer of the Board by whom that notice was given.
- (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
- (4) On an appeal under this paragraph the Commissioners—
 - (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the enquiry, and
 - (b) shall confirm the notice so far as it requires the production or documents, or the provision of information, that appears to them reasonably required for the purposes of the enquiry.
- (5) A notice that is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
- (6) The decision of the Commissioners on an appeal under this paragraph is final.

Penalty for failure to produce documents etc

- 11 (1) A person who fails to comply with a notice under paragraph 9 (notice to produce documents etc for purposes of enquiry) is liable—
 - (a) to a penalty of £50, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding the amount specified in sub-paragraph (2) below for each day on which the failure continues.
- (2) The amount referred to in sub-paragraph (1)(b) is—
 - (a) £30 if the penalty is determined by an officer of the Board, and
 - (b) £150 if the penalty is determined by the court.
- (3) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

Referral of questions to Special Commissioners during enquiry

- 12 (1) At any time when an enquiry is in progress into a self-certificate any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.
- (2) Notice of referral must be given—
 - (a) jointly by the purchaser and the Inland Revenue,
 - (b) in writing,
 - (c) to the Special Commissioners.
- (3) The notice of referral must specify the question or questions being referred.
- (4) More than one notice of referral may be given under this paragraph in relation to an enquiry.
- (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
 - (a) beginning with the day on which the notice of enquiry was given, and

- (b) ending with the day on which the enquiry is completed.

Withdrawal of notice of referral

- 13 (1) The Inland Revenue or the purchaser may withdraw a notice of referral under paragraph 12 by notice in accordance with this paragraph.
- (2) Notice of withdrawal must be given—
- (a) in writing,
 - (b) to the other party to the referral and to the Special Commissioners,
 - (c) before the first hearing by the Special Commissioners in relation to the referral.

Effect of referral on enquiry

- 14 (1) While proceedings on a referral under paragraph 12 are in progress in relation to an enquiry—
- (a) no closure notice shall be given in relation to the enquiry, and
 - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this paragraph proceedings on a referral are in progress where—
- (a) notice of referral has been given,
 - (b) the notice has not been withdrawn, and
 - (c) the questions referred have not been finally determined.
- (3) For the purposes of sub-paragraph (2)(c) a question referred is finally determined when—
- (a) it has been determined by the Special Commissioners, and
 - (b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

Effect of determination

- 15 (1) The determination of a question referred to the Special Commissioners under paragraph 12 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
- (2) The determination shall be taken into account by the Inland Revenue—
- (a) in reaching their conclusions on the enquiry, and
 - (b) in formulating any amendments of the self-certificate required to give effect to those conclusions.
- (3) Any right of appeal under paragraph 35 of Schedule 10 (appeals against assessments etc) may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.

Completion of enquiry

- 16 (1) An enquiry under paragraph 7 is completed when the Inland Revenue by notice (a “closure notice”) inform the purchaser that they have completed their enquiries and state their conclusions.

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- (2) A closure notice must state whether in the opinion of the Inland Revenue the self-certificate was correct, and if their opinion is that it was not whether in their opinion the transaction to which it relates was chargeable or notifiable.

Direction to complete enquiry

- 17 (1) The purchaser may apply to the General or Special Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.
- (2) Any such application shall be heard and determined in the same way as an appeal.
- (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.