

SCHEDULES

SCHEDULE 35

Section 214

STAMP DUTY LAND TAX: HIGHER RATE FOR CERTAIN TRANSACTIONS

Introductory

- 1 Part 4 of FA 2003 (stamp duty land tax) is amended in accordance with paragraphs 2 to 9.

Higher rate of tax: main provisions

- 2 (1) Section 55 (amount of tax chargeable: general) is amended as follows.
- (2) In subsection (1), after “chargeable transaction” insert “to which this section applies”.
- (3) After that subsection insert—
- “(1A) This section applies to any chargeable transaction other than a transaction to which paragraph 3 of Schedule 4A or step 4 of section 74(1A) (higher rate for certain transactions) applies.”
- (4) In subsection (2), for “That percentage” substitute “The percentage mentioned in subsection (1)”.
- (5) In subsection (5), for “74” substitute “74(2) and (3)”.
- (6) In subsection (7), after “this section” insert “, step 4 of section 74(1A) or paragraph 3 of Schedule 4A”.
- 3 After section 55 insert—

“55A Amount of tax chargeable: higher rate for certain transactions

Schedule 4A provides for the calculation of the tax chargeable in respect of certain transactions involving higher threshold interests in dwellings.”

- 4 After Schedule 4 insert—

“SCHEDULE
4A

STAMP DUTY LAND TAX: HIGHER RATE FOR CERTAIN TRANSACTIONS

Meaning of “higher threshold interest”

- 1 (1) In this paragraph “interest in a single dwelling” means so much of the subject-matter of a chargeable transaction as consists of a chargeable interest in or over a single dwelling (together with appurtenant rights).

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- (2) An interest in a single dwelling is a higher threshold interest for the purposes of this Schedule if chargeable consideration of more than £2,000,000 is attributable to that interest.

Transactions involving a higher threshold interest

- 2 (1) Sub-paragraphs (2) to (8) apply to a chargeable transaction whose subject-matter consists of or includes a higher threshold interest.
- (2) If the main subject-matter of the transaction consists entirely of higher threshold interests, the transaction is a high-value residential transaction for the purposes of paragraph 3.
- (3) If the main subject-matter of the transaction includes a chargeable interest other than a higher threshold interest, the transaction (“the primary transaction”) is to be treated for the relevant purposes as two separate chargeable transactions as follows—
- (a) a transaction whose subject-matter is all the higher threshold interests, together with any appurtenant rights;
 - (b) a transaction whose subject-matter is the remainder of the subject-matter of the primary transaction.
- (4) For those purposes, the chargeable consideration for a transaction treated as occurring under sub-paragraph (3) is so much of the chargeable consideration for the primary transaction as is attributable to that transaction.
- (5) The transaction mentioned in sub-paragraph (3)(a) is a high-value residential transaction for the purposes of paragraph 3.
- (6) “Relevant purposes” means the purposes of—
- (a) paragraphs 3 and 5 of this Schedule,
 - (b) section 55 (amount of tax chargeable: general),
 - (c) Schedule 5 (amount of tax chargeable: rent),
 - (d) Schedule 6B (transfers involving multiple dwellings), and
 - (e) any other provision of this Part, so far as it is necessary because of any of paragraphs (a) to (d) to treat the purposes in question as relevant purposes.
- (7) If a transaction treated under sub-paragraph (3) as two separate transactions is notifiable, each of the separate transactions (but not the primary transaction) is also treated as a separate, and notifiable, transaction for the purposes of section 76 (duty to deliver land transaction return).
- (8) The provisions relating to land transaction returns are to be read with any adjustments that may be necessary as a result of sub-paragraph (7).
- (9) The reference in sub-paragraph (1) to a chargeable transaction does not include a transaction to which section 74 (exercise of collective rights by tenants of flats) or section 75 (crofting community right to buy) applies.

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Amount of tax chargeable: higher rate for certain transactions

- 3 (1) Where this paragraph applies to a chargeable transaction—
- (a) the amount of tax chargeable in respect of the transaction is 15% of the chargeable consideration for the transaction, and
 - (b) the transaction is not taken to be linked to any other transaction for the purposes of section 55(4).
- (2) This paragraph applies to a chargeable transaction if—
- (a) the transaction is a high-value residential transaction, and
 - (b) the condition in sub-paragraph (3) is met.
- (3) The condition is that—
- (a) the purchaser is a company,
 - (b) the acquisition is made by or on behalf of the members of a partnership one or more of whose members is a company, or
 - (c) the acquisition is made for the purposes of a collective investment scheme.
- (4) References in sub-paragraph (3) to a company do not include a company acting in its capacity as trustee of a settlement.
- (5) If there are two or more purchasers acting jointly, the condition in sub-paragraph (3) is treated as met if it is met in relation to at least one of those purchasers.
- (6) In relation to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17(2) of Schedule 15, sub-paragraph (3) has effect as if the following were substituted for paragraph (b) of that sub-paragraph—
- “(b) the purchasers (see paragraph 17(3) of Schedule 15) include a company, or”.
- (7) In relation to an event that is a chargeable transaction by virtue of paragraph 17A(4) of that Schedule, sub-paragraph (3) has effect as if the following were substituted for paragraph (b) of that sub-paragraph—
- “(b) the purchasers (see paragraph 17A(5) of Schedule 15) include a company, or”.
- (8) For the purposes of sub-paragraph (3), paragraph 3 of Schedule 16 (bare trustees) applies as if sub-paragraphs (2) and (3) of that paragraph were omitted.
- (9) In the case of a transaction for which the whole or part of the chargeable consideration is rent, this paragraph has effect subject to section 56 and Schedule 5 (amount of tax chargeable: rent).
- (10) The Treasury may by order amend this paragraph for the purpose of limiting the circumstances in which the condition in sub-paragraph (3) is to be treated as met.

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Acquisitions of interests in the same dwelling through different transactions

- 4 (1) Sub-paragraphs (2) and (3) apply if—
- (a) the subject-matter of a chargeable transaction includes a chargeable interest in or over a dwelling,
 - (b) one or more land transactions, the subject-matter of each of which includes a chargeable interest in or over the dwelling, are linked to that chargeable transaction, and
 - (c) the total consideration attributable to the interests mentioned in paragraphs (a) and (b) (and to any appurtenant rights, but disregarding any rent) is more than £2,000,000.
- (2) Each of those chargeable interests is treated as a higher threshold interest for the purposes of this Schedule.
- (3) If the condition in paragraph 3(3) is met in the case of the transaction mentioned in sub-paragraph (1)(a), it is also treated as met in the case of each transaction mentioned in sub-paragraph (1)(b) that is a chargeable transaction.
- (4) The transactions referred to in this paragraph do not include any transaction to which section 74 (exercise of collective rights by tenants of flats) or section 75 (crofting community right to buy) applies.

Property developers

- 5 (1) A company is treated as not being a company for the purposes of paragraph 3(3)(a) if—
- (a) the company acquires the subject-matter of the chargeable transaction in the course of a bona fide property development business and for the sole purpose of developing and reselling the land, and
 - (b) the company has carried on that business for at least two years before the effective date of the transaction.
- (2) Where the subject-matter of a chargeable transaction is acquired by or on behalf of the members of a partnership, those members are taken not to include a company for the purposes of paragraph 3(3)(b) if—
- (a) that subject-matter is acquired in the course of a bona fide property development business and for the sole purpose of developing and reselling the land, and
 - (b) the partnership has carried on that business for at least two years before the effective date of the transaction.
- (3) In relation to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17(2) of Schedule 15 (“the partnership transfer”) the purchasers are treated as not including a company for the purposes of paragraph 3(3)(b) (as modified by paragraph 3(6)) if—
- (a) the acquisition effected by the land transfer referred to in paragraph 17(1)(a) of that Schedule was made in the course of a bona fide property development business, and for the sole purpose of developing and reselling the land, and

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- (b) the partnership is continuing to carry on that business at the effective date of the partnership transfer, and has carried it on for at least two years before that date.
- (4) In relation to an event that is a chargeable transaction by virtue of paragraph 17A(4) of Schedule 15 (“the qualifying event”) the purchasers are treated as not including a company for the purposes of paragraph 3(3)(b) (as modified by paragraph 3(7)) if—
- (a) the acquisition effected by the land transfer referred to in paragraph 17A(1)(a) of that Schedule was made in the course of a bona fide property development business, and for the sole purpose of developing and reselling the land, and
 - (b) the partnership is continuing to carry on that business at the effective date of the qualifying event, and has carried it on for at least two years before that date.
- (5) A property development business is a business that consists of or includes buying, and redeveloping for resale, residential property.
- (6) For the purposes of sub-paragraph (1)(b) a property development business is treated as having been carried on by the company at any time when it was carried on by a company which is a member of the same group as the company.
- (7) Companies are members of the same group for the purposes of this paragraph if they are members of the same group for the purposes of group relief (see paragraph 1 of Schedule 7).

Partnerships: application of paragraph 2 to certain transactions

- 6
- (1) Sub-paragraphs (2) and (3) apply where the subject-matter of a transaction to which Part 3 of Schedule 15 applies consists of or includes a higher threshold interest.
 - (2) The transaction is not to be treated as a high-value residential transaction by virtue of paragraph 2(2) unless the chargeable consideration for the transaction is more than £2,000,000.
 - (3) Paragraph 2(3) to (8) does not apply to the transaction if—
 - (a) the subject-matter of the transaction includes a chargeable interest other than a higher threshold interest, and
 - (b) the result of applying paragraph 2(3) and (4) would be that chargeable consideration of £2,000,000 or less would be attributable to the separate transaction mentioned in paragraph 2(3)(a).
 - (4) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a transfer of an interest in a partnership that is a chargeable transaction by virtue of sub-paragraph (2) of paragraph 14 of Schedule 15 is—
 - (a) if the transfer is a Type A transfer, the relevant partnership property as defined in sub-paragraph (5) of that paragraph, or
 - (b) if the transfer is a Type B transfer, the relevant partnership property as defined in sub-paragraph (5A) of that paragraph.

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- (5) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a transfer of an interest in a partnership that is a chargeable transaction by virtue of sub-paragraph (2) of paragraph 17 of Schedule 15 is the subject-matter of the land transfer referred to in sub-paragraph (1)(a) of that paragraph.
- (6) For the purposes of sub-paragraph (1) and paragraph 2, the subject-matter (and the main subject-matter) of a chargeable transaction that is treated as occurring by virtue of sub-paragraph (4) of paragraph 17A of Schedule 15 is the subject-matter of the land transfer referred to in sub-paragraph (1)(a) of that paragraph.

Meaning of “dwelling”

- 7 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.
- (2) 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
 - (b) it is in the process of being constructed or adapted for such use.
- (3) 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.
- (4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of the dwelling.
- (5) The subject-matter of a transaction is also taken to 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 part of the building, has not begun by the time the contract is substantially performed.
- (6) In sub-paragraph (5) “contract”, “relevant deeming provision” and “substantially performed” have the same meaning as in paragraph 7(5) of Schedule 6B.
- (7) A building or part of a building used for a purpose specified in section 116(2) or (3) is not used as a dwelling for the purposes of sub-paragraph (2) or (5).
- (8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use.

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- 8 (1) The Treasury may by order amend paragraph 7 so as to specify cases where use of a building is to be use of a building as a dwelling for the purposes of sub-paragraph (2) or (5) of that paragraph.
- (2) The reference in section 116(8)(a) (power to amend section 116(2) and (3)) to “the purposes of subsection (1)” includes a reference to the purposes of paragraph 7(2) and (5).

Interpretation

- 9 In this Schedule—
- “appurtenant rights”, in relation to a chargeable interest that is, or is part of, the subject-matter of a transaction, means any rights or interests appurtenant or pertaining to the chargeable interest that are acquired with it;
- “attributable” means attributable on a just and reasonable basis;
- “collective investment scheme” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 235 of that Act);
- “company” means a body corporate other than a partnership.”

Higher rate of tax: exercise of collective rights by tenants of flats

- 5 (1) Section 74 (exercise of collective rights by tenants of flats) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) The rate of tax is determined as follows.
- Step 1*
- Determine the fraction of the relevant consideration produced by dividing the total amount of that consideration by the number of qualifying flats contained in the premises.
- Step 2*
- If the amount produced by step 1 is £2,000,000 or less, determine the rate of tax and the tax chargeable in accordance with subsections (2) and (3).
- Step 3*
- If the amount produced by step 1 is more than £2,000,000 and the condition in paragraph 3(3) of Schedule 4A is not met with respect to the transaction, determine the rate of tax and the tax chargeable in accordance with subsections (2) and (3).
- Step 4*
- If the amount produced by step 1 is more than £2,000,000 and the condition in paragraph 3(3) of Schedule 4A is met with respect to the transaction, subsections (2) and (3) do not apply, and the amount of tax chargeable in respect of the transaction is 15% of the chargeable consideration for the transaction.”
- (3) For subsection (2) substitute—

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“(2) The rate of tax is determined under section 55 by reference to the fraction of the relevant consideration calculated under step 1 of subsection (1A).”

Minor and consequential amendments

6 (1) Section 109 (general power to vary Part 4 of FA 2003 by regulations) is amended as follows.

(2) After subsection (2) insert—

“(2A) The power under subsection (2)(b) includes power to alter the conditions for the application to a chargeable transaction of paragraph 3 of Schedule 4A (higher rate for certain transactions), other than the condition that the transaction must be a high-value residential transaction.”

(3) In subsection (3)—

(a) for “subsection (2)(b),” substitute “subsections (2)(b) and (2A),”

(b) omit the “or” at the end of paragraph (a), and

(c) after that paragraph insert—

“(aa) section 74(1A) (exercise of collective rights by tenants of flats),

(ab) Schedule 4A (amount of tax chargeable: high-value interests in dwellings), or”.

7 (1) Schedule 5 (amount of tax chargeable: rent) is amended as follows.

(2) In paragraph 9—

(a) in sub-paragraph (4)—

(i) after “section 55” insert “or 74(1A)”, and

(ii) after “Schedule” (in the second place it occurs) insert “4A or”, and

(b) in sub-paragraph (5)—

(i) for “that section” substitute “section 55”, and

(ii) after “Schedule” (in the second place it occurs) insert “6B”.

(3) In paragraph 9A(1), for “where there is chargeable consideration other than rent.” substitute “where—

(a) there is chargeable consideration other than rent, and

(b) section 55 (amount of tax chargeable: general) applies to the transaction (whether as a result of paragraph 2 of Schedule 4A or otherwise).”

8 In paragraph 2(4) of Schedule 6B (transfers involving multiple dwellings)—

(a) omit the “or” at the end of paragraph (a), and

(b) after that paragraph insert—

“(aa) paragraph 3 of Schedule 4A applies to it, or”.

9 (1) Schedule 15 (partnerships) is amended as follows.

(2) In paragraphs 11(2C) and 19(2C), in the substituted sub-paragraph (4)—

(a) after “section 55” insert “or 74(1A)”, and

(b) after “Schedule” (in the second place it occurs) insert “4A or”.

(3) In paragraph 30(2)—

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- (a) for “either or both” substitute “one or more”, and
- (b) after paragraph (a) insert—
 - “(aa) paragraph 3 of Schedule 4A applies to the transaction;”.

Application of amendments

- 10 (1) Except as mentioned in sub-paragraph (2), the amendments made by this Schedule have effect in relation to any land transaction of which the effective date is on or after 21 March 2012.
- (2) Those amendments do not have effect in relation to any transaction that is—
- (a) effected in pursuance of a contract entered into and substantially performed before 21 March 2012,
 - (b) effected in pursuance of a contract entered into before that date and not excluded by sub-paragraph (3), or
 - (c) excepted by sub-paragraph (4).
- (3) A transaction effected in pursuance of a contract entered into before 21 March 2012 is excluded by this sub-paragraph if—
- (a) there is any variation of the contract, or assignment (or assignation) of rights under the contract, on or after 21 March 2012,
 - (b) the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
 - (c) on or after that date there is an assignment (or 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 purchaser under the contract becomes entitled to call for a conveyance.
- (4) A transaction treated as occurring under paragraph 17(2) or 17A(4) of Schedule 15 to FA 2003 (partnerships) is excepted by this sub-paragraph if the effective date of the land transfer referred to in sub-paragraph (1)(a) of the paragraph concerned is before 21 March 2012.