

Draft Order laid before the Scottish Parliament under section 68(2)(c) of the Land and Buildings Transaction Tax (Scotland) Act 2013 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2015 No.

LAND AND BUILDINGS TRANSACTION TAX

The Land and Buildings Transaction Tax
(Sub-sale Development Relief and Multiple
Dwellings Relief) (Scotland) Order 2015

Made - - - - 2015
Coming into force - - 1st April 2015

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 27(3)(a) and (b) and (4) and 68(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 68(2)(c) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

PART 1

General

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Land and Buildings Transaction Tax (Sub-sale Development Relief and Multiple Dwellings Relief) (Scotland) Order 2015 and comes into force on 1st April 2015.

(2) In this Order “the Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013.

(1) 2013 asp. 11.

“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.

12. The minimum prescribed amount is such proportion as may be prescribed by the Scottish Ministers by order of—

$$TT - RT$$

where—

TT is the amount of tax that would be due in respect of the transaction but for this schedule, and

RT is the tax due in relation to remaining property.”.

Prescribed proportion

9. Article 2 of the Land and Buildings Transaction Tax (Prescribed Proportions) (Scotland) Order 2014(2) continues in force and the proportion prescribed by that article is to be the proportion prescribed for the purposes of paragraph 11 of schedule 5 to the Act (as substituted by article 8 of this Order).

St Andrew’s House,
Edinburgh
Date

Name
A member of the Scottish Government

SCHEDULE

Article 7

“SCHEDULE 10A

(introduced by section 27)

Sub-sale development relief

PART 1

Introductory

Overview of relief

1.—(1) This schedule provides for relief in the case of land transactions involving certain sub-sales.

(2) It is arranged as follows—

Part 2 provides for the relief and defines key terms and expressions,

Part 3 provides for withdrawal of the relief,

Part 4 makes provision for supplementary matters.

PART 2

The relief

General

2.—(1) Relief under this schedule may be claimed by the buyer (the “first buyer”) in a contract (the “first contract”) for the acquisition by that buyer of a chargeable interest under which the acquisition is to be completed by a conveyance if—

(a) there is a qualifying sub-sale, and

(b) the qualifying conditions are met.

(2) The reference in sub-paragraph (1) to a contract does not include a contract that is a sub-sale or an assignment of rights in relation to another contract.

Qualifying sub-sale

3. A sub-sale is a qualifying sub-sale if—

(a) it is a sub-sale under which—

(i) the first buyer contracts to sell the whole or part of the subject-matter of the first contract to another person (the “second buyer”), and

(ii) the second buyer becomes entitled to call for a conveyance to that person of the whole or part of the subject-matter of the first contract, and

(b) immediately before the first buyer entered into the sub-sale, the first buyer was entitled under the first contract to call for a conveyance of the whole or part of that subject-matter.

Qualifying conditions

4.—(1) The qualifying conditions are that—

- (a) the substantial performance or completion of the first contract takes place at the same time as, and in connection with, the substantial performance or completion of the qualifying sub-sale, and
- (b) significant development for commercial purposes of the subject-matter of the qualifying sub-sale will be completed within the relevant period.

(2) For the purposes of sub-paragraph (1)(a), an assignment, sub-sale or other transaction (relating to the whole or part of the subject-matter of the qualifying sub-sale), as a result of which a person other than the second buyer becomes entitled to call for a conveyance to that person, is not to be treated as substantial performance of the qualifying sub-sale.

(3) The “relevant period” is the period of 5 years from the date on which the first buyer entered into the qualifying sub-sale.

Subject-matter

5. References in this schedule to the “subject-matter” of a qualifying sub-sale are to the chargeable interest the conveyance of which the second buyer is entitled to call for as a result of the qualifying sub-sale.

6. References in this schedule to “part of the subject-matter” of the first contract are to a chargeable interest that is the same as the chargeable interest referred to in paragraph 2(1) except that it relates to part only of the land concerned.

Significant development

7. In this schedule—

“development”—

- (a) means the building, on the subject-matter of the qualifying sub-sale, of buildings including educational, sports and leisure, residential, retail, office or industrial buildings (but not agricultural buildings, mining or engineering works (other than wind farms) or plant and machinery), and
- (b) includes the redevelopment of such buildings, where the redevelopment works carried out are comparable in scale or cost to the construction of such buildings,

“significant development” means development that is significant having regard to, among other things, the nature and extent of the subject-matter of the qualifying sub-sale and to the market value of that subject-matter.

8. In paragraph 7—

“agricultural” is to be construed as meaning used for the purposes of the trade of agriculture, which includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes,

“building” has the meaning given in section 55 of the Building (Scotland) Act 2003(3),

“industrial building” includes a building built to be used for the purposes of a trade carried on in a factory, mill or laboratory, for the purposes of a dock undertaking, for the purposes

(3) 2003 asp. 8.

of the trade of hotel-keeping, or for the purposes of a trade which consists of the operation or management of an airport used solely or mainly by aircraft carrying passengers or cargo for hire or reward.

Full relief

9.—(1) Where the subject-matter of the qualifying sub-sale is the whole subject-matter of the first contract, the land transaction—

- (a) effected as mentioned in section 9(1) on completion of the first contract, or
- (b) treated as effected under section 10(1) on that contract being substantially performed,

is exempt from charge.

(2) The land transaction effected or treated as effected as mentioned in sub-paragraph (1) is “the first land transaction”.

Partial relief

10.—(1) Where the subject-matter of the qualifying sub-sale is part of the subject-matter of the first contract, the chargeable consideration for the first land transaction is taken to be the amount calculated by deducting from the amount that would otherwise be the chargeable consideration for that transaction were there no relief under this schedule, the amount of that consideration attributable to the part of the subject-matter of that transaction which is also the subject-matter of the qualifying sub-sale.

(2) “Attributable” means attributable on a just and reasonable basis.

Claiming the relief

11. Where the first buyer claims relief under this schedule, the return made in respect of the first land transaction must include such evidence as Revenue Scotland may specify as to the significant development for commercial purposes of the subject-matter of the qualifying sub-sale that will be completed within the relevant period.

12. Relief under this schedule may not be claimed if relief is claimed under schedule 7 (alternative property finance relief).

PART 3

Withdrawal of relief

Full withdrawal of relief

13. Relief under this schedule is withdrawn if no development of the subject-matter of the qualifying sub-sale takes place within the relevant period.

14. Where relief is withdrawn, the amount of tax chargeable in relation to the first land transaction is the amount that would have been chargeable in respect of that transaction but for the relief.

Partial withdrawal of relief

15.—(1) Relief under this schedule is partially withdrawn if—

- (a) the significant development proposed when the relief was given has not been completed within the relevant period, but
- (b) some development of the subject-matter of the qualifying sub-sale has taken place within that period.

(2) Where relief is partially withdrawn, the amount of tax chargeable in relation to the first land transaction is an appropriate proportion of the amount that would have been chargeable in respect of that transaction but for the relief.

(3) An “appropriate proportion” means an appropriate proportion that is just and reasonable having regard to, among other things, the extent to which the significant development proposed when the relief was given has taken place.

PART 4

Supplementary

Disapplication of section 14

16. Where relief under this schedule is given, section 14(1)(c) is to be disregarded in so far as it relates to the entry into the qualifying sub-sale by the first buyer.

Qualifying sub-sale: consideration

17. Where relief under this schedule is given the chargeable consideration for the qualifying sub-sale is—

- (a) so much of the consideration under the first land transaction as is referable to the subject-matter of the qualifying sub-sale and is to be given (directly or indirectly) by the second buyer or a person connected with the second buyer, and
- (b) the consideration given for the qualifying sub-sale.”

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the Act”) to insert a new schedule 10A which provides for a targeted relief. The targeted relief is to provide relief from land and buildings transaction tax where the second of two connected transactions leads to a significant development of the subjects of the second of the land transactions. The relief requires that the substantial performance or completion of the first contract takes place at the same time as, and in connection with, the substantial performance or completion of the second contract. Accordingly where there is a time gap between someone acquiring a site through a conveyance and deciding to sell it on to a third party, the relief is not available.

The connected land transactions must be effected by a sub-sale arrangement by which a first buyer sells the subjects to a second buyer.

Because the sub-sale transactions can mean that the second buyer pays the first buyer a premium for the sub-sale transactions and may have to pay the first seller some or all of the purchase price under the first contract, paragraph 17 of new schedule 10A to the Act provides that the chargeable consideration under the second contract shall be for the purposes of assessing the chargeable consideration so much of the consideration under the first contract as is referable to the subject matter of the sub-sale transaction and is to be given (directly or indirectly) by the second buyer or a person connected with the second buyer plus the consideration given for the sub-sale transaction.

Paragraph 4 of the new schedule 10A to the Act sets out the relief conditions which must be fulfilled for the first buyer to qualify for the relief. The relief conditions are that within 5 years from the sub-sale transaction a significant development has taken place on the subjects of the sub-sale transaction. Paragraph 7 defines a significant development for commercial purposes to mean development that is significant having regard to, among other things, the nature and extent of the subject-matter of the sub-sale transaction and to the market value of that subject-matter. It also includes redevelopment. It requires construction or redevelopment of buildings, which are widely defined to include most types of commercial building out-with the agricultural sector but not to include plant and machinery. For redevelopment of buildings, the redevelopment works carried out must be comparable in scale or cost to the construction of such buildings.

Part 3 of the new schedule 10A makes provision for full or partial withdrawal of relief in the event of significant development not taking place.

Article 8 of the Order modifies paragraphs 11 and 12 of schedule 5 (multiple dwellings relief) to the Act to clarify that the minimum prescribed amount of relief is a percentage of the amount that would be payable in respect of the dwellings but for the relief, and not a percentage of the amount that would be payable in respect of the dwellings and the remaining property.

Article 9 provides for article 2 of the Land and Buildings Transaction Tax (Prescribed Proportions) (Scotland) Order 2014 to continue in force for the purposes of paragraph 11 of schedule 5 to the Act (as substituted by article 8 of this Order).