
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).