



# Finance Act 2004

## 2004 CHAPTER 12

### PART 6

#### OTHER TAXES

##### *Stamp duty land tax*

#### 297 Leases

- (1) Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended as follows.
- (2) In subsection (3) of section 43 (land transactions), in paragraph (d) (inserted by paragraph 2(b) of Schedule 39 to this Act), after “where” insert “(i)” and at the end insert “, or
  - (ii) paragraph 15A of Schedule 17A (reduction of rent or term) applies.”.
- (3) In section 48 (chargeable interests), at the end of subsection (7) (inserted by paragraph 4(2) of that Schedule) insert “and to paragraph 15A of Schedule 17A (reduction of rent or term of lease)”.
- (4) In section 53 (deemed market value where transaction involves connected company), for subsection (1) substitute—
  - “(1) This section applies where the purchaser is a company and—
    - (a) the vendor is connected with the purchaser, or
    - (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the vendor is connected.
  - (1A) The chargeable consideration for the transaction shall be taken to be not less than—
    - (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
    - (b) if the acquisition is the grant of a lease at a rent, that rent.”.

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*Status: This is the original version (as it was originally enacted).*

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- (5) In section 79 (registration of land transactions etc), in subsection (2) (transactions to which section does not apply) (as amended by paragraph 7 of Schedule 39 to this Act) —
- (a) in paragraph (a) for the words from “by virtue of” to the end substitute “by virtue of—
    - (i) section 45 (contract and conveyance: effect of transfer of rights), or
    - (ii) paragraph 12B of Schedule 17A (assignment of agreement for lease),”;
  - (b) at the end insert—
    - “(c) under paragraph 12A(2) or 19(3) of Schedule 17A (agreement for lease), or
    - (d) under paragraph 13 (increase of rent) or 15A (reduction of rent or term) of that Schedule.”.
- (6) After that subsection insert—
- “(2A) Subsection (1), so far as relating to the entry of a notice under section 34 of the Land Registration Act 2002 or section 38 of the Land Registration Act (Northern Ireland) 1970 (notice in respect of interest affecting registered land), does not apply where the land transaction in question is the variation of a lease.”.
- (7) In subsection (3) of that section, after “The certificate” insert “referred to in subsection (1)”.
- (8) In Schedule 4 (chargeable consideration), in paragraph 10 (carrying out of works), in sub-paragraph (2A) (inserted by paragraph 9(2) of Schedule 39 to this Act), for the words from the beginning to “completion,” substitute—
- “Where by virtue of—
- (a) subsection (8) of section 44 (contract and conveyance),
  - (b) paragraph 12A of Schedule 17A (agreement for lease), or
  - (c) paragraph 19(3) to (6) of Schedule 17A (missives of let etc in Scotland),
- there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease),”.
- (9) Subsections (2) to (4) and (8) apply in relation to any transaction of which the effective date is on or after the day on which this Act is passed.
- (10) Subsections (5) to (7) apply in relation to any transaction or deemed transaction of which the effective date is on or after 17th March 2004.
- (11) In this section “effective date” has the same meaning as in Part 4 of the Finance Act 2003 (c. 14).

## **298 Notification, registration and penalties**

- (1) Part 4 of the Finance Act 2003 (stamp duty land tax) is amended as follows.

- (2) In section 77 (notifiable transactions)—
- (a) after subsection (2) insert—
- “(2A) The assignment of a lease is notifiable if—
- (a) the grant of the lease, if occurring at the time of the assignment, would be notifiable, or
- (b) there is consideration for the assignment that is chargeable at a rate of 1% or higher, or would be so chargeable but for a relief.”;
- (b) in subsection (3), for “unless it is exempt from charge under Schedule 3” substitute “unless—
- (a) the acquisition is exempt from charge under Schedule 3, or
- (b) the land consists entirely of residential property and the chargeable consideration for the acquisition, together with that of any linked transactions, is less than £1,000”;
- (c) after subsection (5) (inserted by paragraph 4(3) of Schedule 39 to this Act) insert—

“(6) In this section “relief” does not include any exemption from charge under Schedule 3.”.

- (3) In section 79 (registration of land transactions etc), in subsection (1)(b), after “any register maintained by the Keeper of the Registers of Scotland” insert “(other than the Register of Community Interests in Land)”.
- (4) In section 99 (general provisions about penalties), after subsection (2) insert—
- “(2A) Where a person is liable to more than one tax-related penalty in respect of the same land transaction, each penalty after the first shall be reduced so that his liability to such penalties, in total, does not exceed the amount of whichever is (or, but for this subsection, would be) the greatest one.”.
- (5) In Schedule 6 (disadvantaged areas relief)—
- (a) for the heading of Part 4 substitute “SUPPLEMENTARY”;
- (b) after paragraph 12 insert—

*“Notification of transactions*

13 For the purposes of section 77 (which specifies what land transactions are notifiable) no account shall be taken of any provision of this Schedule to the effect that consideration does not count as chargeable consideration.”.

**299 Claims not included in returns**

- (1) Part 4 of the Finance Act 2003 (c. 14) (stamp duty land tax) is amended as follows.
- (2) After section 82 insert—

**“82A Claims not included in returns**

Schedule 11A has effect with respect to claims not included in returns.”.

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*Status: This is the original version (as it was originally enacted).*

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- (3) After Schedule 11 insert the Schedule set out in Schedule 40 to this Act.
- (4) In section 80 (adjustment where contingency ceases or consideration is ascertained), in subsection (4) (claim for repayment), for the words from “the amount” to the end substitute—
- “(a) the purchaser may, within the period allowed for amendment of the land transaction return, amend the return accordingly;
  - (b) after the end of that period he may (if the land transaction return is not so amended) make a claim to the Inland Revenue for repayment of the amount overpaid”.
- (5) In section 111 (claim for repayment if regulations under general power not approved) in subsection (1), for the words from “any amount” to the end substitute “a claim may be made to the Inland Revenue for repayment of any tax, interest or penalty that would not have been payable but for the regulations”.
- (6) In section 113 (functions conferred on “the Inland Revenue”), after subsection (3) insert—
- “(3A) The following functions of the Inland Revenue under Schedule 11A (claims not included in returns) are functions of the Board—
- (a) functions under paragraph 2(1) (form of claims),
  - (b) functions relating to a claim made to the Board.”.
- (7) In Schedule 10 (returns, enquiries, assessments and appeals), in paragraph 33 (relief in case of double assessment)—
- (a) in sub-paragraph (1), for “for relief under this paragraph” substitute “to the Inland Revenue for relief against any double charge”;
  - (b) omit sub-paragraphs (2) and (3).
- (8) In paragraph 34 of that Schedule (relief in case of mistake in return)—
- (a) in sub-paragraph (1), for “for relief under this paragraph” substitute “to the Inland Revenue for relief against any excessive charge”;
  - (b) in sub-paragraph (2), omit “by notice in writing given to the Inland Revenue”;
  - (c) omit sub-paragraph (3).

### **300 Assents and appropriations by personal representatives**

- (1) In Schedule 3 to the Finance Act 2003 (c. 14) (stamp duty land tax: transactions exempt from charge), after paragraph 3 insert—

*“Assents and appropriations by personal representatives*

- 3A (1) The acquisition of property by a person in or towards satisfaction of his entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is exempt from charge.
- (2) Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.
- (3) Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 8A(1) of Schedule 4.

(4) In this paragraph—

“debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and

“secured debt” means debt that, immediately after the death of the deceased person, is secured on the property.”

(2) The amendment made by this section is deemed always to have had effect.

### **301 Chargeable consideration**

(1) In Schedule 3 to the Finance Act 2003 (transactions exempt from charge), in paragraph 4 (variation of testamentary dispositions etc) after sub-paragraph (2) insert—

“(2A) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 8A(2) of Schedule 4.”

(2) Schedule 4 to that Act (stamp duty land tax: chargeable consideration) is amended as follows.

(3) In paragraph 8 (debt as consideration), after sub-paragraph (1) insert—

“(1A) Where—

(a) debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and

(b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,

then for the purposes of this paragraph there is an assumption of that debt by the purchaser, and that assumption of debt constitutes chargeable consideration for the transaction.

(1B) Where in a case in which sub-paragraph (1)(b) applies—

(a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and

(b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there are two or more such persons immediately afterwards,

the amount of secured debt assumed shall be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to his undivided share of the property at that time.

(1C) For the purposes of sub-paragraph (1B), in England and Wales and Northern Ireland each joint tenant of property is treated as holding an equal undivided share of it.”

(4) In sub-paragraph (2) of that paragraph, for “sub-paragraph (1)” substitute “this paragraph”.

(5) After paragraph 8 insert—

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*“Cases where conditions for exemption not fully met*

- 8A (1) Where a land transaction would be exempt from charge under paragraph 3A of Schedule 3 (assents and appropriations by personal representatives) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.
- “Secured debt” has the same meaning as in that paragraph.
- (2) Where a land transaction would be exempt from charge under paragraph 4 of Schedule 3 (variation of testamentary dispositions etc) but for a failure to meet the condition in sub-paragraph (2)(b) of that paragraph (no consideration other than variation of another disposition), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned in that sub-paragraph.”.
- (6) The amendments made by subsections (3) and (4) apply in relation to any transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is on or after the day on which this act is passed.
- (7) The other amendments made by this section are deemed always to have had effect.

### **302 Charities relief**

- (1) In Schedule 8 to the Finance Act 2003 (stamp duty land tax: charities relief), after paragraph 2 insert—

*“Cases where first condition not fully met*

- 3 (1) This paragraph applies where—
- (a) a land transaction is not exempt from charge under paragraph 1 because the first condition in that paragraph is not met, but
  - (b) the purchaser (“C”) intends to hold the greater part of the subject-matter of the transaction for qualifying charitable purposes.
- (2) In such a case—
- (a) the transaction is exempt from charge, but
  - (b) for the purposes of paragraph 2 (withdrawal of charities relief) “disqualifying event” includes—
    - (i) any transfer by C of a major interest in the whole or any part of the subject-matter of the transaction, or
    - (ii) any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter,
 that is not made in furtherance of the charitable purposes of C.
- (3) For the purposes of sub-paragraph (2)(b)(ii)—
- (a) a lease is granted “at a premium” if there is consideration other than rent, and
  - (b) a lease is a “low-rental” lease if the annual rent (if any) does not exceed £600 a year.

- (4) In relation to a transaction that, by virtue of this paragraph, is a disqualifying event for the purposes of paragraph 2—
- (a) the date of the event for those purposes is the effective date of the transaction;
  - (b) paragraph 2 has effect as if—
    - (i) in sub-paragraph (1)(b), for “at the time of” there were substituted “immediately before”,
    - (ii) in sub-paragraph (4)(a), for “at the time of” there were substituted “immediately before and immediately after”, and
    - (iii) sub-paragraph (4)(b) were omitted.
- (5) In this paragraph—
- “qualifying charitable purposes” has the same meaning as in paragraph 1;
- “rent” has the same meaning as in Schedule 5 (amount of tax chargeable: rent) and “annual rent” has the same meaning as in paragraph 9(2) of that Schedule.”.
- (2) After paragraph 3 of that Schedule (inserted by subsection (1) above) insert—
- “Charitable trusts*
- 4 (1) This Schedule applies in relation to a charitable trust as it applies in relation to a charity.
- (2) In this paragraph “charitable trust” means—
- (a) a trust of which all the beneficiaries are charities, or
  - (b) a unit trust scheme in which all the unit holders are charities,
- and “charity” has the same meaning as in paragraph 1.
- (3) In this Schedule as it applies by virtue of this paragraph—
- (a) references to the purchaser in paragraphs (a) and (b) of paragraph 1(2) are to the beneficiaries or unit holders, or any of them;
  - (b) the reference to the purchaser in paragraph 2(3)(a) is to any of the beneficiaries or unit holders;
  - (c) the reference in paragraph 3(2)(b) to the charitable purposes of C is to those of the beneficiaries or unit holders, or any of them.”
- (3) In paragraph 1(1) of that Schedule, for “this paragraph” substitute “this Schedule”.
- (4) In paragraph 2(1) of that Schedule, for “paragraph 1 (charities relief)” substitute “this Schedule”.
- (5) In section 81 (further return where relief withdrawn), in paragraph (c) of subsection (4) (meaning of “the disqualifying event”), after “paragraph 2(3)” insert “or 3(2)”.
- (6) In section 87 (interest on unpaid tax), in paragraph (c) of subsection (4) (meaning of “the disqualifying event”), after “paragraph 2(3)” insert “or 3(2)”.
- (7) This section applies in relation to any transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is on or after the day on which this Act is passed.

**303 Shared ownership leases**

- (1) In Schedule 9 to the Finance Act 2003 (stamp duty land tax: right to buy, shared ownership leases etc), after paragraph 4 insert—

*“Shared ownership lease: treatment of staircasing transaction*

- 4A (1) This paragraph applies where under a shared ownership lease—
- (a) the lessee or lessees have the right, on the payment of a sum, to require the terms of the lease to be altered so that the rent payable under it is reduced, and
  - (b) by exercising that right the lessee or lessees acquire an interest, additional to one already held, calculated by reference to the market value of the dwelling and expressed as a percentage of the dwelling or its value (a “share of the dwelling”).

- (2) Such an acquisition is exempt from charge if—

- (a) an election was made for tax to be charged in accordance with paragraph 2 or, as the case may be, paragraph 4 and any tax chargeable in respect of the grant of the lease has been paid, or
- (b) immediately after the acquisition the total share of the dwelling held by the lessee or lessees does not exceed 80%.

- (3) In this paragraph “shared ownership lease” means a lease granted—

- (a) by a qualifying body, or
- (b) in pursuance of the preserved right to buy,

in relation to which the conditions in paragraph 2(2) or 4(2) are met.

- (4) Section 118 (meaning of “market value”) does not apply in relation to the references in this paragraph to the market value of the dwelling.”.

- (2) In sub-paragraph (1) of paragraph 5 of that Schedule (meaning of “qualifying body” and “preserved right to buy”) for “2 and 4” substitute “2, 4 and 4A”.

- (3) In Schedule 19 to that Act (stamp duty land tax: commencement and transitional provisions), in paragraph 7 (earlier related transactions under stamp duty), for sub-paragraph (2) substitute—

- “(2) In paragraph 3 of Schedule 9 (relief for transfer of reversion under shared ownership lease where election made for market value treatment) and paragraph 4A of that Schedule (shared ownership lease: treatment of staircasing transaction) as they apply in a case where the original lease was granted before the implementation date—

- (a) a reference to a lease to which paragraph 2 of that Schedule applies shall be read as a reference to a lease to which section 97 of the Finance Act 1980 applied (which made provision for stamp duty corresponding to that paragraph), and
- (b) a reference to an election having been made for tax to be charged in accordance with paragraph 2 or 4 of that Schedule shall be read as a reference to the lease having contained a statement of the parties' intention such as is mentioned in section 97(2)(d) of the Finance Act 1980 or, as the case may be, paragraph (d) of section 108(5) of the Finance Act 1981 (which made provision for stamp duty corresponding to paragraph 4).”.



(4) Subsections (1) and (2) apply in relation to an acquisition after 17th March 2004.

(5) Subsection (3) is deemed to have come into force on 1st December 2003.

### **304 Application to certain partnership transactions**

Schedule 41 to this Act (which makes provision with respect to the application of stamp duty land tax to certain transactions involving partnerships) has effect.

### **305 Liability of partners**

In paragraph 7 of Schedule 15 to the Finance Act 2003 (c. 14) (stamp duty land tax: joint and several liability of responsible partners) after sub-paragraph (1) insert—

“(1A) No amount may be recovered by virtue of sub-paragraph (1)(a) or (b) from a person who did not become a responsible partner until after the effective date of the transaction in respect of which the tax is payable.”