
*Changes to legislation: There are currently no known outstanding effects
for the Finance Act 2005, SCHEDULE 8. (See end of Document for details)*

SCHEDULES

SCHEDULE 8

Section 94

STAMP DUTY LAND TAX: ALTERNATIVE PROPERTY FINANCE

Introduction

- 1 Part 4 of FA 2003 is amended in accordance with this Schedule.

Alternative property finance: England and Wales and Northern Ireland

- 2 After section 71 insert—

“71A Alternative property finance: land sold to financial institution and leased to individual

- (1) This section applies where arrangements are entered into between an individual and a financial institution under which—
- (a) the institution purchases a major interest in land or an undivided share of a major interest in land (“the first transaction”),
 - (b) where the interest purchased is an undivided share, the major interest is held on trust for the institution and the individual as beneficial tenants in common,
 - (c) the institution (or the person holding the land on trust as mentioned in paragraph (b)) grants to the individual out of the major interest a lease (if the major interest is freehold) or a sub-lease (if the major interest is leasehold) (“the second transaction”), and
 - (d) the institution and the individual enter into an agreement under which the individual has a right to require the institution or its successor in title to transfer to the individual (in one transaction or a series of transactions) the whole interest purchased by the institution under the first transaction.
- (2) The first transaction is exempt from charge if the vendor is—
- (a) the individual, or
 - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in subsection (1) entered into between it and the individual.
- (3) The second transaction is exempt from charge if the provisions of this Part relating to the first transaction are complied with (including the payment of any tax chargeable).
- (4) Any transfer to the individual that results from the exercise of the right mentioned in subsection (1)(d) (“a further transaction”) is exempt from charge if—

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- (a) the provisions of this Part relating to the first and second transactions are complied with, and
 - (b) at all times between the second transaction and the further transaction—
 - (i) the interest purchased under the first transaction is held by a financial institution so far as not transferred by a previous further transaction, and
 - (ii) the lease or sub-lease granted under the second transaction is held by the individual.
- (5) The agreement mentioned in subsection (1)(d) is not to be treated—
 - (a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 44(5) does not apply), or
 - (b) as a distinct land transaction by virtue of section 46 (options and rights of pre-emption).
- (6) The requirements of subsection (1), or (4)(b)(ii), are not met if—
 - (a) the individual enters into the arrangement, or holds the lease or sub-lease, as trustee and any beneficiary of the trust is not an individual, or
 - (b) the individual enters into the arrangements, or holds the lease or sub-lease, as partner and any of the other partners is not an individual.
- (7) A further transaction that is exempt from charge by virtue of subsection (4) is not a notifiable transaction unless the transaction involves the transfer to the individual of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.
- (8) In this section “financial institution” means—
 - (a) a bank within the meaning of section 840A of the Taxes Act 1988,
 - (b) a building society within the meaning of the Building Societies Act 1986, or
 - (c) a wholly-owned subsidiary of a bank within paragraph (a) or a building society within paragraph (b).

For the purposes of paragraph (c) a company is a wholly-owned subsidiary of a bank or building society if it has no members except the parent and the parent's wholly-owned subsidiaries or persons acting on behalf of the parent or the parent's wholly-owned subsidiaries.
- (9) References in this section to an individual shall be read, in relation to times after the death of the individual concerned, as references to his personal representatives.
- (10) This section does not apply in relation to land in Scotland.”

Alternative property finance: Scotland

- 3 (1) Section 72 (alternative property finance: land sold to financial institution and leased to individual) is amended as follows.
- (2) In subsection (1)—

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- (a) in paragraph (b)—
 - (i) for “freehold” substitute “ the interest of the owner ”, and
 - (ii) for “leasehold” substitute “ the tenant's right over or interest in a property subject to a lease ”, and
 - (b) in paragraph (c), omit “or its successor in title”.
- (3) For subsection (7) substitute—
- “(7) In this section “financial institution” has the same meaning as in section 71A.”
- (4) Omit subsection (8).
- (5) After subsection (9) insert—
- “(10) This section applies only in relation to land in Scotland.”
- (6) In the heading, after “finance” insert “ in Scotland ”.

4 After section 72 insert—

“72A Alternative property finance in Scotland: land sold to financial institution and individual in common

- (1) This section applies where arrangements are entered into between an individual and a financial institution under which—
 - (a) the institution and the individual purchase a major interest in land as owners in common (“the first transaction”),
 - (b) the institution and the individual enter into an agreement under which the individual has a right to occupy the land exclusively (“the second transaction”), and
 - (c) the institution and the individual enter into an agreement under which the individual has a right to require the institution to transfer to the individual (in one transaction or a series of transactions) the whole interest purchased under the first transaction.
- (2) The first transaction is exempt from charge if the vendor is—
 - (a) the individual, or
 - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in subsection (1) entered into between it and the individual.
- (3) The second transaction is exempt from charge if the provisions of this Part relating to the first transaction are complied with (including the payment of any tax chargeable).
- (4) Any transfer to the individual that results from the exercise of the right mentioned in subsection (1)(c) (“a further transaction”) is exempt from charge if—
 - (a) the provisions of this Part relating to the first transaction are complied with, and
 - (b) at all times between the first and the further transaction—

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- (i) the interest purchased under the first transaction is held by a financial institution and the individual as owners in common, and
 - (ii) the land is occupied by the individual under the agreement mentioned in subsection (1)(b).
- (5) The agreement mentioned in subsection (1)(c) is not to be treated—
 - (a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 44(5) does not apply), or
 - (b) as a distinct land transaction by virtue of section 46 (options and rights of pre-emption).
- (6) The requirements of subsection (1), or (4)(b)(ii), are not met if the individual enters into the arrangements, or occupies the land, as partner and any of the other partners is not an individual.
- (7) A further transaction that is exempt from charge by virtue of subsection (4) is not a notifiable transaction unless the transaction involves the transfer to the individual of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.
- (8) In this section “financial institution” has the same meaning as in section 71A.
- (9) References in this section to an individual shall be read, in relation to times after the death of the individual concerned, as references to his personal representatives.
- (10) This section applies only in relation to land in Scotland.”

Consequential amendments

- 5 (1) Section 73 (alternative property finance: land sold to individual and re-sold to individual) is amended as follows.
- (2) In subsection (2)(b), for “section 72(1)” substitute “ section 71A(1), 72(1) or 72A(1) ”.
- (3) In subsection (5)(a), for “section 72” substitute “ section 71A ”.
- 6 In section 122 (index of defined expressions), in the entry for “notifiable (in relation to a land transaction)” at the end insert “ (see too sections 71A(7) and 72A(7)) ”.

Commencement

- 7 (1) Paragraphs 2 and 3, and paragraphs 5 and 6 so far as relating to section 71A of FA 2003, have effect in any case where the effective date of the first transaction, within the meaning of section 71A of FA 2003 (as inserted by paragraph 2), falls on or after the day on which this Act is passed.
- (2) Paragraph 4, and paragraphs 5 and 6 so far as relating to section 72A of FA 2003, have effect in any case where the effective date of the first transaction, within the meaning of section 72A of FA 2003 (as inserted by paragraph 4), falls on or after the day on which this Act is passed.
- (3) In this paragraph “the effective date” has the same meaning as in Part 4 of FA 2003.

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