



# Finance Act 2007

## 2007 CHAPTER 11

### PART 5

#### SDLT, STAMP DUTY AND SDRT

#### *SDLT: anti-avoidance provisions*

### 71 Anti-avoidance

- (1) In FA 2003, after section 75 insert (in place of the section inserted by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/ 3237))—

#### **“75A Anti-avoidance**

- (1) This section applies where—
- (a) one person (V) disposes of a chargeable interest and another person (P) acquires either it or a chargeable interest deriving from it,
  - (b) a number of transactions (including the disposal and acquisition) are involved in connection with the disposal and acquisition (“the scheme transactions”), and
  - (c) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition of V's chargeable interest by P on its disposal by V.
- (2) In subsection (1) “transaction” includes, in particular—
- (a) a non-land transaction,
  - (b) an agreement, offer or undertaking not to take specified action,
  - (c) any kind of arrangement whether or not it could otherwise be described as a transaction, and
  - (d) a transaction which takes place after the acquisition by P of the chargeable interest.

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- (3) The scheme transactions may include, for example—
  - (a) the acquisition by P of a lease deriving from a freehold owned or formerly owned by V;
  - (b) a sub-sale to a third person;
  - (c) the grant of a lease to a third person subject to a right to terminate;
  - (d) the exercise of a right to terminate a lease or to take some other action;
  - (e) an agreement not to exercise a right to terminate a lease or to take some other action;
  - (f) the variation of a right to terminate a lease or to take some other action.
- (4) Where this section applies—
  - (a) any of the scheme transactions which is a land transaction shall be disregarded for the purposes of this Part, but
  - (b) there shall be a notional land transaction for the purposes of this Part effecting the acquisition of V's chargeable interest by P on its disposal by V.
- (5) The chargeable consideration on the notional transaction mentioned in subsections (1)(c) and (4)(b) is the largest amount (or aggregate amount)—
  - (a) given by or on behalf of any one person by way of consideration for the scheme transactions, or
  - (b) received by or on behalf of V (or a person connected with V within the meaning of section 839 of the Taxes Act 1988) by way of consideration for the scheme transactions.
- (6) The effective date of the notional transaction is—
  - (a) the last date of completion for the scheme transactions, or
  - (b) if earlier, the last date on which a contract in respect of the scheme transactions is substantially performed.
- (7) This section does not apply where subsection (1)(c) is satisfied only by reason of—
  - (a) sections 71A to 73, or
  - (b) a provision of Schedule 9.

### **75B Anti-avoidance: incidental transactions**

- (1) In calculating the chargeable consideration on the notional transaction for the purposes of section 75A(5), consideration for a transaction shall be ignored if or in so far as the transaction is merely incidental to the transfer of the chargeable interest from V to P.
- (2) A transaction is not incidental to the transfer of the chargeable interest from V to P—
  - (a) if or in so far as it forms part of a process, or series of transactions, by which the transfer is effected,
  - (b) if the transfer of the chargeable interest is conditional on the completion of the transaction, or
  - (c) if it is of a kind specified in section 75A(3).

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- (3) A transaction may, in particular, be incidental if or in so far as it is undertaken only for a purpose relating to—
  - (a) the construction of a building on property to which the chargeable interest relates,
  - (b) the sale or supply of anything other than land, or
  - (c) a loan to P secured by a mortgage, or any other provision of finance to enable P, or another person, to pay for part of a process, or series of transactions, by which the chargeable interest transfers from V to P.
- (4) In subsection (3)—
  - (a) paragraph (a) is subject to subsection (2)(a) to (c),
  - (b) paragraph (b) is subject to subsection (2)(a) and (c), and
  - (c) paragraph (c) is subject to subsection (2)(a) to (c).
- (5) The exclusion required by subsection (1) shall be effected by way of just and reasonable apportionment if necessary.
- (6) In this section a reference to the transfer of a chargeable interest from V to P includes a reference to a disposal by V of an interest acquired by P.

#### **75C Anti-avoidance: supplemental**

- (1) A transfer of shares or securities shall be ignored for the purposes of section 75A if but for this subsection it would be the first of a series of scheme transactions.
- (2) The notional transaction under section 75A attracts any relief under this Part which it would attract if it were an actual transaction (subject to the terms and restrictions of the relief).
- (3) The notional transaction under section 75A is a land transaction entered into for the purposes of or in connection with the transfer of an undertaking or part for the purposes of paragraphs 7 and 8 of Schedule 7, if any of the scheme transactions is entered into for the purposes of or in connection with the transfer of the undertaking or part.
- (4) In the application of section 75A(5) no account shall be taken of any amount paid by way of consideration in respect of a transaction to which any of sections 60, 61, 63, 64, 65, 66, 67, 69, 71, 74 and 75, or a provision of Schedule 6A or 8, applies.
- (5) In the application of section 75A(5) an amount given or received partly in respect of the chargeable interest acquired by P and partly in respect of another chargeable interest shall be subjected to just and reasonable apportionment.
- (6) Section 53 applies to the notional transaction under section 75A.
- (7) Paragraph 5 of Schedule 4 applies to the notional transaction under section 75A.
- (8) For the purposes of section 75A—
  - (a) an interest in a property-investment partnership (within the meaning of paragraph 14 of Schedule 15) is a chargeable interest in so far as it concerns land owned by the partnership, and

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- (b) where V or P is a partnership, Part 3 of Schedule 15 applies to the notional transaction as to the transfer of a chargeable interest from or to a partnership.
- (9) For the purposes of section 75A a reference to an amount of consideration includes a reference to the value of consideration given as money's worth.
- (10) Stamp duty land tax paid in respect of a land transaction which is to be disregarded by virtue of section 75A(4)(a) is taken to have been paid in respect of the notional transaction by virtue of section 75A(4)(b).
- (11) The Treasury may by order provide for section 75A not to apply in specified circumstances.
- (12) An order under subsection (11) may include incidental, consequential or transitional provision and may make provision with retrospective effect.”
- (2) The amendment made by subsection (1) has effect in respect of disposals and acquisitions if the disposal mentioned in new section 75A(1)(a) (inserted by that subsection) takes place on or after 6th December 2006.
- (3) But—
  - (a) the transitional provisions of sub-paragraphs (2) to (5) of paragraph 1 of the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/3237) continue to have effect in relation to this section as in relation to that paragraph, and
  - (b) a provision of new section 75C (inserted by subsection (1) above) shall not have effect where the disposal mentioned in new section 75A(1)(a) took place before the day on which this Act is passed, if or in so far as the provision would make a person liable for a higher amount of tax than would have been charged in accordance with those regulations.

## 72 Partnerships

- (1) Schedule 15 to FA 2003 (stamp duty land tax: partnerships) is amended as follows.
- (2) A reference in this section to a provision of that Schedule is to the provision as it had effect before variation by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006.
- (3) In Step Two of paragraph 12(1) (transfer to partnership: how to calculate the “sum of the lower proportions”)—
  - (a) in paragraph (b), for “or is connected with the relevant owner” substitute “ or is an individual connected with the relevant owner ”, and
  - (b) insert at the end— “ (If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.) ”
- (4) In paragraph 12, after sub-paragraph (2) insert—
  - “(3) For the purpose of paragraph (b) of Step 2 a company is to be treated as an individual connected with the relevant owner in so far as it—
    - (a) holds property as trustee, and
    - (b) is connected with the relevant owner only because of section 839(3) of the Taxes Act 1988.”

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- (5) Omit paragraph 13 (transfer to partnership where all partners are companies).
- (6) In paragraph 14 (transfer of interest in property-investment partnership)—
  - (a) omit sub-paragraphs (1)(b) and (4), and
  - (b) insert at the end—
    - “(9) An interest in respect of the transfer of which this paragraph applies shall be treated as a chargeable interest for the purposes of paragraph 3(1) of Schedule 7 to the extent that the relevant partnership property consists of a chargeable interest.”,and in the italic cross-heading before it, omit “*for consideration*”.
- (7) In Step Two of paragraph 20(1) (transfer from partnership: how to calculate the “sum of the lower proportions”)—
  - (a) in paragraph (b), for “or was connected with the relevant owner” substitute “or was an individual connected with the relevant owner”, and
  - (b) insert at the end— “ (If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.) ”
- (8) In paragraph 20, after sub-paragraph (2) insert—
  - “(3) For the purpose of paragraph (b) of Step 2 a company is to be treated as an individual connected with the relevant owner in so far as it—
    - (a) holds property as trustee, and
    - (b) is connected with the relevant owner only because of section 839(3) of the Taxes Act 1988.”
- (9) After paragraph 27 insert—
  - “<sup>27A</sup>
    - (1) This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 12)—
      - (a) a company (“the connected company”) would have been a corresponding partner of a relevant owner (“the original owner”) but for the fact that paragraph (b) of Step Two includes connected persons only if they are individuals, and
      - (b) the connected company and the original owner are members of the same group.
    - (2) The charge in respect of the transaction shall be reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purposes of calculating the sum of the lower proportions.
    - (3) The provisions of Part 1 of Schedule 7 apply to group relief under sub-paragraph (2) above as to group relief under paragraph 1(1) of Schedule 7, but—
      - (a) with the omission of paragraph 2(2)(a),
      - (b) with the substitution for “the purchaser” in paragraph 3(1)(a) of “a partner who was, at the effective date of the transaction, a partner and a member of the same group as the transferor (“the relevant partner”)”, and

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- (c) with the other modifications specified in paragraph 27(3) to (6) above.”

(10) For paragraph 36 substitute—

“36 For the purposes of this Part of this Schedule, where a person acquires or increases a partnership share there is a transfer of an interest in the partnership (to that partner and from the other partners).”

(11) In paragraph 39 (“connected persons”), insert at the end—

“(3) As applied by sub-paragraph (1) for the purposes of paragraph 12 or 20, that section has effect with the omission of subsection (3)(c) (trustee connected with settlement).”

(12) In Schedule 16 to FA 2003 (trusts and powers)—

- (a) in paragraph 3(1) (bare trust), after “a chargeable interest” insert “ or an interest in a partnership ”, and
- (b) in paragraph 4 (trustees of settlement), after “a chargeable interest” insert “ or an interest in a partnership ”.

(13) The amendments made by subsections (1) to (11) have effect in respect of transfers occurring on or after the day on which this Act is passed.

<sup>F1</sup>(14) . . . . .

(15) The amendment made by subsection (12) has effect in respect of acquisitions occurring on or after the day on which this Act is passed.

(16) An amendment made by this section replaces, to the extent provided for by subsections (13) to (15), any variation made by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/3237).

(17) Despite subsections (13) to (16), the transitional provisions of sub-paragraphs (8) to (10) of paragraph 2 of the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/3237) continue to have effect in relation to the amendments made by this section as in relation to that paragraph.

#### Textual Amendments

**F1** S. 72(14) omitted (21.7.2008) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 31 para. 10](#)

#### *Reliefs in relation to shares etc*

### 73 Exemptions: intermediaries, repurchases etc

Schedule 21 contains provision in relation to exemptions from stamp duty and stamp duty reserve tax in cases involving intermediaries, repurchases, stock lending or recognised investment exchanges.

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## **74 Acquisition relief: disregard of company holding own shares**

- (1) In section 75 of FA 1986 (relief on acquisition of undertaking of company in pursuance of scheme for reconstruction of that company), after subsection (5) insert—

“(5A) If immediately before the acquisition the target company or the acquiring company holds any of its own shares, the shares are to be treated for the purposes of subsections (4) and (5) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).”

- (2) In section 77 of that Act (relief on acquisition of target company's share capital), after subsection (3) insert—

“(3A) If immediately before the acquisition the target company or the acquiring company holds any of its own shares, the shares are to be treated for the purposes of subsection (3) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).”

- (3) In Part 2 of Schedule 7 to FA 2003 (SDLT: reconstruction and acquisition reliefs), in paragraph 7 (reconstruction relief) after sub-paragraph (5) insert—

“(5A) If immediately before the acquisition the target company or the acquiring company holds any of its own shares, the shares are to be treated for the purposes of sub-paragraphs (2) and (4) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).”

- (4) The amendments made by subsections (1) and (2) have effect in relation to any instrument executed on or after the day on which this Act is passed.

- (5) The amendment made by subsection (3) has effect in relation to any land transaction of which the effective date is on or after that day.

*Other reliefs etc*

## **75 SDLT: alternative finance arrangements**

- (1) In FA 2003, after section 73A insert—

### **“73B Exempt interests**

- (1) An interest held by a financial institution as a result of the first transaction within the meaning of section 71A(1)(a), 72(1)(a) or 72A(1)(a) is an exempt interest for the purposes of stamp duty land tax.

- (2) That interest ceases to be an exempt interest if—

- (a) the lease or agreement mentioned in section 71A(1)(c), 72(1)(b) or 72A(1)(b) ceases to have effect, or
- (b) the right under section 71A(1)(d), 72(1)(c) or 72A(1)(c) ceases to have effect or becomes subject to a restriction.

- (3) Subsection (1) does not apply if the first transaction is exempt from charge by virtue of Schedule 7.

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- (4) Subsection (1) does not make an interest exempt in respect of—
  - (a) the first transaction itself, or
  - (b) a further transaction or third transaction within the meaning of section 71A(4), 72(4) or 72A(4).”
- (2) In section 48 of that Act (stamp duty land tax: exempt interests), after subsection (3) insert—
 

“(3A) Section 73B makes additional provision about exempt interests in relation to alternative finance arrangements.”
- (3) For the text of sections 71A(8), 72(7), 72A(8) and 73(5)(a) of that Act (alternative finance arrangements: meaning of “financial institution”), substitute “ In this section “financial institution” has the meaning given by section 46 of the Finance Act 2005 (alternative finance arrangements). ”
- (4) The amendments made by this section—
  - (a) have effect in relation to anything that would, but for the exemption provided by new section 73B inserted by subsection (1) above, be a land transaction with an effective date on or after 22nd March 2007, and
  - (b) apply, in accordance with paragraph (a), to interests irrespective of the date of their creation.

## 76 **SDLT: exchanges**

- (1) In section 47(1) of FA 2003 (exchanges), insert at the end “ (and they are not linked transactions within the meaning of section 108) ”.
- (2) In section 108 of that Act (linked transactions), insert at the end—
 

“(4) This section is subject to section 47(1).”
- (3) The amendments made by this section have effect in relation to a set of land transactions if the effective date of any of them is on or after the day on which this Act is passed.

## 77 **SDLT: shared ownership trusts**

- (1) In Schedule 9 to FA 2003 (right to buy and shared ownership leases), insert at the end—

### “Shared ownership trust: introduction

- 7 (1) In this Schedule “shared ownership trust” means a trust of land, within the meaning of section 1 of the Trusts of Land and Appointment of Trustees Act 1996, which satisfies the following conditions.
- (2) Condition 1 is that the trust property is—
  - (a) a dwelling, and
  - (b) in England or Wales.
- (3) Condition 2 is that one of the beneficiaries (“the social landlord”) is a qualifying body (within the meaning of paragraph 5(2)).



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- (4) Condition 3 is that the terms of the trust—
- (a) provide for one or more of the individual beneficiaries (“the purchaser”) to have exclusive use of the trust property as the only or main residence of the purchaser,
  - (b) require the purchaser to make an initial payment to the social landlord (“the initial capital”),
  - (c) require the purchaser to make additional payments to the social landlord by way of compensation under section 13(6)(a) of the Trusts of Land and Appointment of Trustees Act 1996 (“rent-equivalent payments”),
  - (d) enable the purchaser to make other additional payments to the social landlord (“equity-acquisition payments”),
  - (e) determine the initial beneficial interests of the social landlord and of the purchaser by reference to the initial capital,
  - (f) specify a sum, equating or relating to the market value of the dwelling, by reference to which the initial capital was calculated, and
  - (g) provide for the purchaser's beneficial interest in the trust property to increase, and the social landlord's to diminish (or to be extinguished), as equity-acquisition payments are made.
- (5) Section 118 (meaning of “market value”) does not apply to this paragraph.
- (6) In Condition 1 “dwelling” includes—
- (a) a building which is being constructed or adapted for use as a dwelling,
  - (b) land which is to be used for the purpose of the construction of a dwelling, and
  - (c) land which is, or is to become, the garden or grounds of a dwelling.

#### **Shared ownership trust: “purchaser”**

- 8 For the purposes of the application of stamp duty land tax in relation to a shared ownership trust, the person (or persons) identified as the purchaser in accordance with paragraph 7, and not the social landlord or any other beneficiary, is (or are) to be treated as the purchaser of the trust property.

#### **Shared ownership trust: election for market value treatment**

- 9 (1) This paragraph applies where—
- (a) a shared ownership trust is declared, and
  - (b) the purchaser elects for tax to be charged in accordance with this paragraph.
- (2) An election must be included in—
- (a) the land transaction return for the declaration of the shared ownership trust, or
  - (b) an amendment of that return.
- (3) An election may not be revoked.

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- (4) Where this paragraph applies—
  - (a) the chargeable consideration for the declaration of the shared ownership trust shall be taken to be the amount stated in accordance with paragraph 7(4)(f), and
  - (b) no account shall be taken for the purposes of stamp duty land tax of rent-equivalent payments.
- (5) The transfer to the purchaser of an interest in the trust property upon the termination of the trust is exempt from charge if—
  - (a) an election was made under this paragraph, and
  - (b) any tax chargeable in respect of the declaration of the shared ownership trust has been paid.

#### **Shared ownership trust: treatment of staircasing transaction**

- 10 (1) An equity-acquisition additional payment under a shared ownership trust, and the consequent increase in the purchaser's beneficial interest, shall be exempt from charge if—
  - (a) an election was made under paragraph 9, and
  - (b) any tax chargeable in respect of the declaration of trust has been paid.
- (2) An equity-acquisition additional payment under a shared ownership trust, and the consequent increase in the purchaser's beneficial interest, shall also be exempt from charge if following the increase the purchaser's beneficial interest does not exceed 80% of the total beneficial interest in the trust property.

#### **Shared ownership trust: treatment of additional payments where no election made**

- 11 Where no election has been made under paragraph 9 in respect of a shared ownership trust—
  - (a) the initial capital shall be treated for the purposes of stamp duty land tax as chargeable consideration other than rent, and
  - (b) any rent-equivalent additional payment by the purchaser shall be treated for the purposes of stamp duty land tax as a payment of rent.”
- (2) The amendment made by subsection (1) has effect in relation to land transactions with an effective date on or after the day on which this Act is passed.

#### **78 SDLT: shared ownership lease**

In paragraph 2 of Schedule 9 to FA 2003 (stamp duty land tax: shared ownership lease), after sub-paragraph (4) insert—

“(4A) Where this paragraph applies no account shall be taken for the purposes of stamp duty land tax of the rent mentioned in sub-paragraph (2)(d).”

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## **79 Certain transfers of school land**

- (1) In Chapter 7 of Part 2 of the School Standards and Framework Act 1998 (c. 31) (“the 1998 Act”) (new framework for maintained schools), omit sections 79 and 79A (no stamp duty or SDLT payable in respect of certain transfers).
- (2) The repeal of—
  - (a) section 79A of the 1998 Act, and
  - (b) section 79 of that Act as it applies for the purposes of section 79A,has effect in relation to any land transaction of which the effective date is on or after the day on which this Act is passed.
- (3) Subject to that, the repeal of section 79 of the 1998 Act has effect in relation to any instrument executed on or after that day.

*SDLT: administration*

## **80 Payment of tax**

- (1) FA 2003 is amended as follows.
- (2) In section 76(3) (payment to accompany land transaction return), omit paragraph (b).
- (3) In section 80(2) (adjustment for change of circumstance: payment to accompany return), for paragraph (d) substitute—
  - “(d) the tax or additional tax payable must be paid not later than the filing date for the return.”
- (4) In section 81 (withdrawal of relief: further return)—
  - (a) in subsection (2), omit paragraph (b), and
  - (b) after that subsection insert—
    - “(2A) Tax payable must be paid not later than the filing date for the return.”
- (5) In section 81A(1) (later linked transaction: return), for paragraph (d) substitute—
  - “(d) the tax or additional tax payable must be paid not later than the filing date for the return.”
- (6) In section 86 (payment of tax)—
  - (a) in subsection (1), for “at the same time that a land transaction return is made in respect of the transaction.” substitute “not later than the filing date for the land transaction return relating to the transaction. ”, and
  - (b) in subsection (2), for “at the same time that a return is made in respect of the withdrawal” substitute “not later than the filing date for the return relating to the withdrawal ”.
- (7) In paragraph 2 of Schedule 10 (payment to accompany land transaction return), omit sub-paragraph (2)(b).
- (8) For each of paragraphs 3(3)(d), 4(3)(d) and 8(3)(d) of Schedule 17A (leases) substitute—
  - “(d) the tax or additional tax payable must be paid not later than the filing date for the return.”

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- (9) The amendments made by this section have effect as follows—
- (a) the amendment made by subsection (2) has effect in relation to land transactions with an effective date on or after the day on which this Act is passed,
  - (b) the amendment made by subsection (3) has effect in relation to returns where the event as a result of which the return is required occurs on or after the day on which this Act is passed,
  - (c) the amendment made by subsection (4) has effect in relation to returns where the disqualifying event occurs on or after the day on which this Act is passed,
  - (d) the amendment made by subsection (5) has effect in relation to returns where the effective date of the later transaction is on or after the day on which this Act is passed,
  - (e) the amendment made by subsection (6) has effect in relation to land transactions with an effective date on or after the day on which this Act is passed,
  - (f) the amendment made by subsection (7) has effect in relation to land transactions with an effective date on or after the day on which this Act is passed, and
  - (g) the amendment made by subsection (8) has effect in respect of requirements to deliver a return or further return which arise on or after the day on which this Act is passed.

**F281 Self-certificate declarations**

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**Textual Amendments**

**F2** S. 81 omitted (with effect in accordance with s. 94(5) of the amending Act) by virtue of [Finance Act 2008 \(c. 9\)](#), [Sch. 30 para. 15](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 993 modified by [2016 c. 24 s. 118\(2\)](#)
- Sch. 24 para. 12(5)(za) inserted by [2015 c. 11 Sch. 20 para. 6\(a\)](#)
- Sch. 24 para. 21A(A1) inserted by [2015 c. 11 Sch. 20 para. 7\(2\)](#)
- Sch. 24 para. 4A(A1)(1) substituted for Sch. 24 para. 4A(1) by [2015 c. 11 Sch. 20 para. 3\(2\)](#)