

SCHEDULE 2

PRE-COMPLETION TRANSACTIONS

PART 4

THE MINIMUM CONSIDERATION RULE

The minimum consideration rule

- 15 (1) This paragraph applies where paragraph 7(3) or 13(2) (pre-completion transactions: chargeable interest acquired, or treated as acquired, by transferee) applies.
- (2) If there is a relevant connection between parties, then for the purposes of paragraph 1 of Schedule 4 the consideration given by the buyer for the subject-matter of the land transaction referred to in paragraph 7(4) or 13(2) is taken to be the highest of—
- (a) the amount it would be apart from this sub-paragraph,
 - (b) the first minimum amount (see paragraph 16), or
 - (c) the second minimum amount (see paragraph 17).
- (3) There is a “relevant connection between parties” if the transferee in relation to the pre-completion transaction mentioned in paragraph 7(1) or 13(1) (“the implemented transaction”) is connected with, or is not acting at arm’s length in relation to—
- (a) the transferor in relation to the implemented transaction, or
 - (b) a transferor in relation to a pre-completion transaction—
 - (i) which is one in a chain of successive pre-completion transactions (all having at least part of their subject-matter in common and including the implemented transaction) in relation to the original contract, and
 - (ii) which precedes the implemented transaction in the chain.
- (4) Where the implemented transaction is a pre-completion transaction in relation to—
- (a) a contract for a land transaction that is not itself a free-standing transfer in relation to any other contract, and
 - (b) a contract, or two or more successive contracts, that are themselves free-standing transfers in relation to the contract mentioned in paragraph (a),
- references in this Part of this Schedule to the “original contract” are to the contract mentioned in paragraph (a) only (and references to the “original buyer” are to be read accordingly).

The first minimum amount

- 16 (1) The “first minimum amount” is to be determined in accordance with sub-paragraph (2) unless conditions A to C in sub-paragraph (3) are met, in which case it is to be determined in accordance with that sub-paragraph.
- (2) The “first minimum amount” is—
- (a) if the chargeable interest acquired (or treated as acquired) under the land transaction referred to in paragraph 7(4) or 13(2) is the whole subject-matter of the original contract, the amount of any consideration (in money or

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money's worth) agreed to be given, under the terms of the original contract, for the acquisition of that subject-matter, or

- (b) if paragraph (a) does not apply, so much of the amount mentioned in that paragraph as is referable, on a just and reasonable apportionment, to the chargeable interest acquired (or treated as acquired) under the land transaction referred to in paragraph 7(4) or 13(2).

- (3) If conditions A to C are met, the “first minimum amount” is the amount of any consideration (in money or money's worth) agreed, under the terms of the transfer to the first T, to be given in respect of the subject-matter of that transaction (including any consideration relating to an obligation of the transferor under the transfer to the first T).

Condition A

That the pre-completion transaction referred to in paragraph 7(4) or 13(2) is one of a chain of successive transactions (all having at least part of their subject-matter in common) that are pre-completion transactions in relation to the original contract.

Condition B

That a person (“T”) is the transferor under a pre-completion transaction that forms part of the chain and T is connected with, or not acting at arm's length in relation to—

- (a) the transferee under that transaction, or
 (b) the transferee under a subsequent transaction in the chain (including the pre-completion transaction referred to in paragraph 7(4) or 13(2)).

Condition C

That, having regard to all the circumstances, the obtaining of a tax advantage (for any person) was not the main purpose, or one of the main purposes, of T entering into any pre-completion transaction in the chain or any arrangement of which such a transaction was part.

- (4) In this paragraph—
- (a) “the first T” means—
- (i) if condition B is met in relation to only one pre-completion transaction, T, or
- (ii) if condition B is met in relation to more than one pre-completion transaction in the chain, the transferor in relation to the first of the pre-completion transactions in relation to which condition B is met;
- (b) “the transfer to the first T” means—
- (i) the pre-completion transaction under which the first T is the transferee, or
- (ii) the original contract (if T is the original buyer);
- (c) “tax advantage” has the same meaning as in section 31(3).

The second minimum amount

- 17 (1) The “second minimum amount” is the total of the net amounts of consideration given by the relevant parties.

- (2) The net amount of consideration given by any relevant party is—

$C'P - C'R$

Figure 1

where—

CP is the total amount of consideration given by the party for the acquisition of the chargeable interest or as consideration for a pre-completion transaction;

CR is the total of any amounts of consideration given to the party by another relevant party (or other relevant parties) as consideration for the acquisition of the chargeable interest or as consideration for the pre-completion transaction,

and if CR is greater than CP then the net amount of consideration given by the relevant party is taken to be zero.

(3) The relevant parties are—

- (a) the original buyer, and
- (b) the transferee,

unless sub-paragraph (4) applies.

(4) If the pre-completion transaction mentioned in paragraph 7(1) or 13(1) (“the implemented transaction”) is one in a chain of successive transactions (all having at least part of their subject-matter in common) that are pre-completion transactions in relation to the original contract, only the following are relevant parties—

- (a) the transferor and the transferee in relation to the implemented transaction;
- (b) a transferor in relation to a preceding transaction, if that transferor is connected with, or is not acting at arm’s length in relation to, the transferee under the implemented transaction;
- (c) the transferee under a pre-completion transaction where the transferor is a relevant party (whether by virtue of this paragraph (c) or otherwise),

and in this sub-paragraph and sub-paragraph (6) “preceding transaction” means a pre-completion transaction that precedes the implemented transaction in the chain.

(5) For the purposes of sub-paragraph (2)—

- (a) amounts given by a person connected with a relevant party are treated as given by the relevant party;
- (b) amounts given to a person connected with a relevant party are treated as given to the relevant party,

but a person who is a relevant party is not to be treated, for the purposes of this paragraph, as connected with another relevant party (even if, apart from this sub-paragraph, that would be the case).

(6) If the subject-matter of the implemented transaction is not the whole subject-matter of the original contract—

- (a) the amounts that are taken for the purposes of sub-paragraph (2) to be given “for the acquisition of the chargeable interest” are to be determined on a just and reasonable basis, and
- (b) only so much of the consideration for a preceding transaction as is referable, on a just and reasonable basis, to the subject-matter of the implemented transaction is to be taken into account under sub-paragraph (2).