



# Land and Buildings Transaction Tax (Scotland) Act 2013

2013 asp 11

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 25th June 2013 and received Royal Assent on 31st July 2013**

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

## PART 1

### LAND AND BUILDINGS TRANSACTION TAX

#### **1 The tax**

- (1) A tax (to be known as land and buildings transaction tax) is to be charged on land transactions.
- (2) The tax is chargeable—
  - (a) whether or not there is an instrument effecting the transaction,
  - (b) if there is such an instrument, whether or not it is executed in Scotland, and
  - (c) whether or not any party to the transaction is present, or resident, in Scotland.
- (3) The Tax Authority is to be responsible for the collection and management of the tax.

#### **2 Overview**

This Act is arranged as follows—

Part 2 makes provision for the key concepts underlying the tax including—

- (a) which transactions are land transactions,
- (b) which interests are, and which are not, chargeable interests in land,
- (c) when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
- (d) which land transactions are, and which are not, chargeable transactions,

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- (e) what is, and what is not, chargeable consideration in relation to a chargeable transaction,

Part 3 makes provision for—

- (a) the amount of tax payable,
- (b) relief from the tax, and
- (c) who is liable to pay the tax,

Part 4 provides for returns relating to land transactions and for the payment of the tax,

Part 5 contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts,

Part 6 contains provision about the application of the Act to leases and non-residential licences,

Part 7 contains general provision, including provisions about the Tax Authority and definitions of expressions used in the Act,

Part 8 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

## **PART 2**

### KEY CONCEPTS

## **CHAPTER 1**

### LAND TRANSACTIONS AND CHARGEABLE INTERESTS

#### *Land transaction*

### **3 Land transaction**

A land transaction is the acquisition of a chargeable interest.

#### *Chargeable interest*

### **4 Chargeable interest**

- (1) A chargeable interest is an interest of a kind mentioned in subsection (2) which is not an exempt interest.
- (2) The interests are—
  - (a) a real right or other interest in or over land in Scotland, or
  - (b) the benefit of an obligation, restriction or condition affecting the value of any such right or interest.
- (3) In subsection (2), “land in Scotland” does not include land below mean low water mark.

## **5 Exempt interest**

- (1) An interest is exempt if it is a security interest.
- (2) In subsection (1) a “security interest” means a real right or other interest in or over land held for the purpose of securing the payment of money or the performance of any other obligation.
- (3) See also paragraphs 21 to 24 of schedule 7 (which make additional provision about exempt interests in relation to alternative property finance arrangements).
- (4) The Scottish Ministers may, by regulations, modify this section so as to—
  - (a) provide that a description of a real right or other interest in or over land is an exempt interest,
  - (b) provide that a description of a real right or other interest in or over land is no longer to be an exempt interest,
  - (c) vary a description of an exempt interest.

### *Acquisition and disposal of chargeable interest*

## **6 Acquisition and disposal of chargeable interest**

- (1) Each of the following is an acquisition and a disposal of a chargeable interest—
  - (a) the creation of the interest,
  - (b) the renunciation or release of the interest,
  - (c) the variation of the interest (but not the variation of a lease).
- (2) The variation of a lease is treated as an acquisition and a disposal of a chargeable interest only where paragraph 29 of schedule 19 (reduction of rent or term or other variation of lease) applies.
- (3) A person acquires a chargeable interest where—
  - (a) the person becomes entitled to the interest on its creation,
  - (b) the person’s interest or right is benefitted or enlarged by the renunciation or release of the interest, or
  - (c) the person benefits from the variation of the interest.
- (4) A person disposes of a chargeable interest where—
  - (a) the person’s interest or right becomes subject to the interest on its creation,
  - (b) the person ceases to be entitled to the interest on its being renounced or released, or
  - (c) the person’s interest or right is subject to or limited by the variation of the interest.
- (5) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any enactment or by operation of law.

## **7 Buyer and seller**

- (1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.

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- (2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.
- (3) The seller, in relation to a land transaction, is the person who disposes of the subject-matter of the transaction.

## CHAPTER 2

### PROVISION ABOUT PARTICULAR TRANSACTIONS

#### *General rules for contracts requiring conveyance*

#### **8 Contract and conveyance**

- (1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.
- (2) A person is not regarded as entering into a land transaction by reason of entering into the contract.
- (3) But see sections 9 and 10.

#### **9 Completion without substantial performance**

- (1) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction.
- (2) In this case the effective date of the transaction is the date of completion.

#### **10 Substantial performance without completion**

- (1) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.
- (2) In this case the effective date of the transaction is when the contract is substantially performed.
- (3) Where subsection (1) applies and the contract is subsequently completed by a conveyance—
  - (a) both the contract and the transaction effected on completion are notifiable transactions, and
  - (b) tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract.
- (4) Where subsection (1) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection is to be (to that extent) repaid by the Tax Authority.
- (5) That repayment must be claimed by amendment of the land transaction return made in respect of the contract.

- (6) Where paragraph 25 of schedule 19 (leases) applies, it applies in place of this section.

*Contract providing for conveyance to third party*

**11 Contract providing for conveyance to third party**

- (1) This section applies where a contract is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
- (a) to a person (C) who is not a party to the contract, or
  - (b) either to C or to B.
- (2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.
- (3) If the contract is substantially performed, B is treated for the purposes of this Act as acquiring a chargeable interest, and accordingly as entering into a land transaction.
- (4) In such a case, the effective date of the transaction is when the contract is substantially performed.
- (5) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) is to be (to that extent) repaid by the Tax Authority.
- (6) Repayment must be claimed by amendment of the land transaction return made in respect of the contract.
- (7) Subject to subsection (8), sections 8 to 10 do not apply in relation to the contract.
- (8) Where—
- (a) this section applies by virtue of subsection (1)(b), and
  - (b) by reason of B's direction or request, A becomes obliged to convey a chargeable interest to B,
- sections 8 to 10 apply to that obligation as they apply to a contract for a land transaction that is to be completed by a conveyance.
- (9) Sections 8 to 10 apply in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1), that is to be completed by a conveyance.
- (10) References to completion in sections 8 to 10, as they apply by virtue of subsection (9), include references to conveyance by A to C of the subject-matter of the contract between B and C.

*Options etc.*

**12 Options and rights of pre-emption**

- (1) The acquisition of—
- (a) an option binding the grantor to enter into a land transaction, or
  - (b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,

is a land transaction distinct from any land transaction resulting from the exercise of the option or right.

- (2) They may be linked transactions (see section 57).
- (3) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge the grantor's obligations under the option in some other way.
- (4) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).
- (5) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.

### *Exchanges*

## **13 Exchanges**

- (1) Where a land transaction is entered into by a person as buyer (alone or jointly) wholly or partly in consideration of another land transaction being entered into by that person (alone or jointly) as seller, this Act applies in relation to each transaction as if each were distinct and separate from the other (and they are not linked transactions within the meaning of section 57).
- (2) A transaction is treated for the purposes of this Act as entered into by a person as buyer wholly or partly in consideration of another land transaction being entered into by that person as seller in any case where an obligation to give consideration for a land transaction that a person enters into as buyer is met wholly or partly by way of that person entering into another transaction as seller.
- (3) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—
  - (a) paragraphs 5 and 6 of schedule 2,
  - (b) paragraph 17 of that schedule.

### *Interpretation*

## **14 Meaning of “substantial performance”**

- (1) A contract is substantially performed when—
  - (a) the buyer, or a person connected with the buyer, takes possession of the whole, or substantially the whole, of the subject-matter of the contract,
  - (b) a substantial amount of the consideration is paid or provided, or
  - (c) there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the original buyer becomes entitled to call for a conveyance to that person.
- (2) For the purpose of subsection (1)(a)—
  - (a) possession includes receipt of rent or the right to receive it, and

- (b) it is immaterial whether possession is taken under the contract or under a licence.
- (3) For the purposes of subsection (1)(b), a substantial amount of the consideration is paid or provided—
  - (a) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided,
  - (b) if the only consideration is rent, when the first payment of rent is made,
  - (c) if the consideration includes both rent and other consideration, when—
    - (i) the whole or substantially the whole of the consideration other than rent is paid or provided, or
    - (ii) the first payment of rent is made.
- (4) For the purposes of subsection (1)(c) the reference to an assignation, subsale or other transaction includes the grant or assignation of an option.

### CHAPTER 3

#### CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

##### *Chargeable transaction*

#### **15 Chargeable transaction**

A land transaction is a chargeable transaction unless it is—

- (a) an exempt transaction, or
- (b) otherwise exempt from charge.

#### **16 Exempt transaction**

A transaction is exempt if schedule 1 provides that it is so exempt.

##### *Chargeable consideration*

#### **17 Chargeable consideration**

- (1) Schedule 2 makes provision as to the chargeable consideration for a transaction.
- (2) The Scottish Ministers may, by regulations, modify this Act relating to chargeable consideration and make such other provision as they consider appropriate about—
  - (a) what is to be treated as chargeable consideration,
  - (b) the determination of the amount or value of chargeable consideration.

##### *Contingent, uncertain or unascertained consideration*

#### **18 Contingent consideration**

- (1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is contingent.

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- (2) The amount or value of the consideration is to be determined on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.
- (3) In this Act, “contingent”, in relation to consideration, means—
  - (a) that it is to be paid or provided only if some uncertain future event occurs, or
  - (b) that it is to cease to be paid or provided if some uncertain future event occurs.

## **19      Uncertain or unascertained consideration**

- (1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained.
- (2) The amount or value of the consideration is to be determined on the basis of a reasonable estimate.
- (3) In this section, “uncertain”, in relation to consideration, means its amount or value depends on uncertain future events.

## **20      Contingent, uncertain or unascertained consideration: further provision**

Sections 18 and 19 have effect subject to—

- (a) section 31 (return where contingency ceases or consideration ascertained),
- (b) section 32 (contingency ceases or consideration is ascertained: less tax payable), and
- (c) section 41 (application to defer payment in case of contingent or uncertain consideration).

*Annuities etc.*

## **21      Annuities etc.: chargeable consideration limited to 12 years’ payments**

- (1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—
  - (a) for life,
  - (b) in perpetuity,
  - (c) for an indefinite period, or
  - (d) for a definite period exceeding 12 years.
- (2) The consideration to be taken into account is limited to 12 years’ annual payments.
- (3) Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are to be taken into account.
- (4) No account is to be taken of any provision for adjustment of the amount payable in line with the retail prices index, the consumer prices index or any other similar index.
- (5) References in this section to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction.



- (6) For the purposes of this section the amount or value of any payment is to be determined (if necessary) in accordance with section 18 (contingent consideration) or 19 (uncertain or unascertained consideration).
- (7) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically.
- (8) References to payment are to be read accordingly.
- (9) Where this section applies—
  - (a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply, and
  - (b) no application may be made under section 41 (application to defer payment in case of contingent or uncertain consideration).

#### *Deemed market value*

### **22 Deemed market value where transaction involves connected company**

- (1) This section applies where the buyer is a company and—
  - (a) the seller is connected with the buyer, 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 seller is connected.
- (2) The chargeable consideration for the transaction is to 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, the rent.
- (3) In this section—

“company” means a body corporate,  
“shares” includes stock and the reference to shares in a company includes reference to securities issued by a company.
- (4) Where this section applies, paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (5) But this section has effect subject to any other provision affording exemption or relief from the tax.
- (6) This section is subject to the exceptions provided for in section 23.

### **23 Exceptions from deemed market value**

- (1) Section 22 does not apply in the following cases.
- (2) In the following provisions “the company” means the company that is the buyer in relation to the transaction in question.
- (3) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.
- (4) Case 2 is where—

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- (a) immediately after the transaction the company holds the property as trustee, and
  - (b) the seller is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).
- (5) Case 3 is where—
- (a) the seller is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
  - (b) it is not the case that—
    - (i) the subject-matter of the transaction, or
    - (ii) an interest from which that interest is derived,
 has, within the period of 3 years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the seller.

### PART 3

#### CALCULATION OF TAX AND RELIEFS

##### *Amount of tax chargeable*

#### 24 Tax rates and tax bands

- (1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band—
  - (a) for residential property transactions, and
  - (b) for non-residential property transactions.
- (2) An order under subsection (1) must specify, in the case of each type of transaction—
  - (a) a nil rate tax band and at least two other tax bands,
  - (b) the tax rate for the nil rate tax band, which must be 0%, and
  - (c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.
- (3) A transaction is a residential property transaction if—
  - (a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
  - (b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.
- (4) A transaction is a non-residential property transaction if—
  - (a) the main subject-matter of the transaction consists of or includes an interest in land that is not residential property, or
  - (b) where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest.
- (5) In the case of a transaction for which the whole or part of the chargeable consideration is rent, see paragraph 3 of schedule 19 (leases) for the tax rates and tax bands applicable to such consideration.

## **25 Amount of tax chargeable**

- (1) The amount of tax chargeable in respect of a chargeable transaction is to be determined as follows.

*Step 1*

For each tax band applicable to the type of transaction, multiply so much of the chargeable consideration for the transaction as falls within the band by the tax rate for that band.

*Step 2*

Calculate the sum of the amounts reached under Step 1.

The result is the amount of tax chargeable.

- (2) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to schedule 19 (leases).
- (3) This section is subject to—
- (a) schedule 5 (multiple dwellings relief),
  - (b) schedule 9 (crofting community right to buy relief),
  - (c) Part 3 of schedule 11 (acquisition relief).

## **26 Amount of tax chargeable: linked transactions**

- (1) Where a chargeable transaction is one of a number of linked transactions, the amount of tax chargeable in respect of the transaction is to be determined as follows.

*Step 1*

For each tax band applicable to the type of transaction, multiply so much of the relevant consideration as falls within the band by the tax rate for that band.

*Step 2*

Calculate the sum of the amounts reached under Step 1.

The result is the total tax chargeable.

*Step 3*

Divide the chargeable consideration for the transaction by the relevant consideration.

*Step 4*

Multiply the total tax chargeable by the fraction reached under Step 3.

The result is the amount of tax chargeable.

- (2) The relevant consideration is the total of the chargeable consideration for all the linked transactions.
- (3) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to schedule 19 (leases).
- (4) This section is subject to—
- (a) schedule 5 (multiple dwellings relief),
  - (b) schedule 9 (crofting community right to buy relief),
  - (c) Part 3 of schedule 11 (acquisition relief).

## *Reliefs*

### **27 Reliefs**

- (1) The following schedules provide for reliefs from the tax in relation to certain land transactions—
  - schedule 3 (sale and leaseback relief),
  - schedule 4 (relief for certain acquisitions of residential property),
  - schedule 5 (multiple dwellings relief),
  - schedule 6 (relief for certain acquisitions by registered social landlords),
  - schedule 7 (alternative property finance relief),
  - schedule 8 (relief for alternative finance investment bonds),
  - schedule 9 (crofting community right to buy relief),
  - schedule 10 (group relief),
  - schedule 11 (reconstruction relief and acquisition relief),
  - schedule 12 (relief for incorporation of limited liability partnership),
  - schedule 13 (charities relief),
  - schedule 14 (relief for certain compulsory purchases),
  - schedule 15 (relief for compliance with planning obligations),
  - schedule 16 (public bodies relief).
- (2) Any relief under any of those schedules must be claimed in the first return made in relation to the transaction or in an amendment of that return.
- (3) The Scottish Ministers may, by order, modify this Act so as to—
  - (a) add a relief,
  - (b) modify an existing relief, or
  - (c) remove a relief.
- (4) An order under subsection (3) may also modify any other enactment that the Scottish Ministers consider appropriate.

## *Liability for tax*

### **28 Liability for tax**

- (1) The buyer is liable to pay the tax in respect of a chargeable transaction.
- (2) As to the liability of buyers acting jointly, see—
  - (a) section 48(2)(c) (joint buyers),
  - (b) paragraph 3 of schedule 17 (partnerships), and
  - (c) paragraphs 15 to 18 of schedule 18 (trusts).

## PART 4

### RETURNS AND PAYMENT

#### CHAPTER 1

##### RETURNS

###### *Duty to make return*

#### **29 Duty to make return**

- (1) The buyer in a notifiable transaction must make a return to the Tax Authority.
- (2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.

###### *Notifiable transactions*

#### **30 Notifiable transactions**

- (1) A land transaction is notifiable unless it is—
  - (a) an exempt transaction,
  - (b) an acquisition of the ownership of land where the chargeable consideration for the acquisition is less than £40,000,
  - (c) an acquisition of a chargeable interest other than a major interest in land where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, or
  - (d) an acquisition specified in subsection (2).
- (2) The following transactions in relation to leases are also not notifiable—
  - (a) the grant of a lease for a period of 7 years or more where—
    - (i) any chargeable consideration other than rent is less than £40,000, and
    - (ii) the relevant rent is less than £1,000,
  - (b) the assignation or renunciation of a lease where—
    - (i) the lease was originally granted for a period of 7 years or more, and
    - (ii) the chargeable consideration for the assignation or renunciation is less than £40,000,
  - (c) the grant of a lease for a period of less than 7 years where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, and
  - (d) the assignation or renunciation of a lease where—
    - (i) the lease was originally granted for a period of less than 7 years, and
    - (ii) the chargeable consideration for the assignation or renunciation does not exceed the nil rate tax band applicable to the transaction.

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- (3) In subsections (1) and (2), “chargeable consideration”—
- (a) where the transaction is one of a number of linked transactions, means the total of the chargeable consideration for all the linked transactions,
  - (b) includes any amount in respect of which tax would be chargeable but for a relief.
- (4) In subsection (2)(a)(ii), “relevant rent” means—
- (a) the annual rent (as defined in paragraph 9(7) of schedule 19), or
  - (b) in the case of the grant of a lease to which paragraph 29 of schedule 17 applies, the relevant chargeable proportion of the annual rent (as calculated in accordance with that paragraph).
- (5) The exceptions in subsections (1)(a) to (d) and (2) do not apply where the transaction is a transaction that a person is treated as entering into by virtue of section 11(3).
- (6) This section has effect subject to—
- (a) section 10(3) (substantial performance without completion),
  - (b) paragraph 17(6) of schedule 2 (arrangements involving public or educational bodies),
  - (c) paragraph 12 of schedule 7 (alternative property finance), and
  - (d) paragraph 41 of schedule 17 (transfer of partnership interests).
- (7) The Scottish Ministers may, by order, amend subsection (1)(b), (2)(a)(i) or (b)(ii) so as to substitute, for the figure for the time being specified there, a different figure.

*Adjustments and further returns*

**31 Return where contingency ceases or consideration ascertained**

- (1) The buyer in a land transaction must make a return to the Tax Authority if—
- (a) section 18(2) or 19(2) (contingent, uncertain or unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
  - (b) an event mentioned in subsection (2) occurs, and
  - (c) the effect of the event is that—
    - (i) the transaction becomes notifiable,
    - (ii) additional tax is payable in respect of the transaction, or
    - (iii) tax is payable where none was payable before.
- (2) The events are—
- (a) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur, or
  - (b) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the event occurred.
- (4) The return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (6) This section does not apply so far as the consideration consists of rent (see schedule 19 (leases)) unless the effect of the event mentioned in subsection (2) is that the transaction becomes notifiable.

### **32 Contingency ceases or consideration ascertained: less tax payable**

- (1) The buyer in a land transaction may take one of the steps mentioned in subsection (2) to obtain a repayment of tax if—
  - (a) section 18(2) or 19(2) (contingent, uncertain and unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
  - (b) an event mentioned in section 31(2) occurs, and
  - (c) the effect of the event is that less tax is payable in respect of the transaction than has already been paid.
- (2) The steps are—
  - (a) within the period allowed for amendment of the land transaction return, amend the return accordingly,
  - (b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority for repayment of the amount overpaid.
- (3) This section does not apply so far as the consideration consists of rent (see schedule 19 (leases)).

### **33 Further return where relief withdrawn**

- (1) The buyer in a land transaction must make a further return to the Tax Authority if relief is withdrawn to any extent under—
  - (a) Part 5 of schedule 4 (relief for certain acquisitions of residential property),
  - (b) Part 5 of schedule 5 (transfer of multiple dwellings),
  - (c) Part 4 of schedule 8 (relief for alternative finance investment bonds),
  - (d) Part 3 of schedule 10 (group relief),
  - (e) Part 4 of schedule 11 (reconstruction relief and acquisition relief), or
  - (f) paragraph 4 of schedule 13 (charities relief).
- (2) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the relevant event occurred.
- (4) The relevant event is—
  - (a) in relation to the withdrawal of relief under schedule 4, an event mentioned in paragraph 14(a), (b) or (c) or 16(a), (b) or (c) of that schedule,
  - (b) in relation to the withdrawal of relief under schedule 5, an event mentioned in paragraph 16(a) or 18(a) of that schedule,
  - (c) in relation to the withdrawal of relief under schedule 8, an event mentioned in paragraph 16 of that schedule,

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- (d) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller within the meaning of schedule 10,
- (e) in relation to the withdrawal of reconstruction relief or acquisition relief, the change of control of the acquiring company mentioned in paragraph 13 of schedule 11,
- (f) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 5 and 6 of schedule 13.

### **34 Return or further return in consequence of later linked transaction**

- (1) This section applies where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that—
  - (a) the earlier transaction becomes notifiable,
  - (b) additional tax is payable in respect of the earlier transaction, or
  - (c) tax is payable in respect of the earlier transaction where none was payable before.
- (2) The buyer in the earlier transaction must make a return (or further return) in respect of that transaction.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the later transaction.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable as a result of the later transaction.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the earlier transaction.
- (6) This section does not affect any requirement to make a land transaction return in respect of the later transaction.

*Returns: form and content etc.*

### **35 Form and content**

- (1) A return under this Act must—
  - (a) be in the form specified by the Tax Authority, and
  - (b) contain the information specified by the Tax Authority.
- (2) The Tax Authority may specify different forms and information for—
  - (a) different kinds of return, and
  - (b) different kinds of transaction.
- (3) The return is treated as containing any information provided by the buyer for the purpose of completing the return.

### **36 Declaration**

- (1) A return under this Act must also include a declaration by the buyer that the return is, to the best of the buyer’s knowledge, correct and complete.
- (2) However, where the buyer authorises an agent to complete the return—



- (a) the agent must certify in the return that the buyer has declared that the information provided in the return, with the exception of the relevant date, is to the best of the buyer's knowledge, correct and complete, and
  - (b) the return must include a declaration by the agent that the relevant date provided in the return is, to the best of the agent's knowledge, correct.
- (3) The relevant date is—
- (a) in relation to a return under section 29, the effective date of the transaction,
  - (b) in relation to a return under section 31, the date of the event as a result of which the return is required,
  - (c) in relation to a return under section 33, the date on which the relevant event occurred,
  - (d) in relation to a return under section 34, the effective date of the later transaction,
  - (e) in relation to a return under paragraph 10 of schedule 19 (leases), the review date (see paragraph 10(7)),
  - (f) in relation to a return under paragraph 11 of that schedule, the day on which the lease is assigned or terminated,
  - (g) in relation to a return under paragraph 20 of that schedule, the date on which the 1 year period mentioned in paragraph 20(3) ended,
  - (h) in relation to a return under paragraph 22 of that schedule, the date on which the deemed fixed term mentioned in paragraph 22(2) ended,
  - (i) in relation to a return under paragraph 30 of that schedule, the date from which the variation mentioned in that paragraph takes effect.

### **37 Amendment**

- (1) The buyer in a land transaction may amend a return relating to the transaction by notice to the Tax Authority.
- (2) The notice must—
  - (a) be in the form specified by the Tax Authority, and
  - (b) contain the information specified by the Tax Authority.
- (3) An amendment may not be made more than 12 months after the last day of the period within which the return must be made.

### *Miscellaneous*

### **38 Interpretation**

References in this Act to the making of a return are to the making of a return that—

- (a) complies with the requirements of sections 35 and 36, and
- (b) contains an assessment of the tax chargeable in respect of the transaction (if one is required).

### **39 Power to amend period in which returns must be made**

- (1) The Scottish Ministers may, by order, amend a provision listed in subsection (2) so as to substitute, for the period for the time being specified there, a different period.

- (2) The provisions are—
- (a) section 29(3),
  - (b) section 31(3),
  - (c) section 33(3),
  - (d) in schedule 19 (leases)—
    - (i) paragraph 10(3),
    - (ii) paragraph 11(3),
    - (iii) paragraph 20(3)(a),
    - (iv) paragraph 22(2)(a),
    - (v) paragraph 30(2)(a).

## CHAPTER 2

### PAYMENT OF TAX

#### 40      **Payment of tax**

- (1) Tax payable in respect of a land transaction must be paid to the Tax Authority.
- (2) Where a return is to be made under any of the following provisions, the tax or additional tax payable must be paid at the same time as the return is made—
- (a) section 29 (land transaction return),
  - (b) section 31 (return where contingency ceases or consideration ascertained),
  - (c) section 33 (further return where relief withdrawn),
  - (d) section 34 (return or further return in consequence of later linked transaction),  
or
  - (e) in schedule 19 (leases)—
    - (i) paragraph 10 (return on 3-yearly review),
    - (ii) paragraph 11 (return on assignation or termination of lease),
    - (iii) paragraph 20 (return where lease for fixed term continues after end of term),
    - (iv) paragraph 22 (return in relation to lease for indefinite term),
    - (v) paragraph 30 (transactions which become notifiable on variation of rent or term).
- (3) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.
- (4) For the purposes of subsections (2) and (3), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of the tax.
- (5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

#### 41      **Application to defer payment in case of contingent or uncertain consideration**

- (1) The buyer may apply to the Tax Authority to defer payment of tax in a case where—

- (a) the amount of tax payable depends on the amount or value of chargeable consideration that, at the effective date of the transaction, is contingent or uncertain, and
  - (b) the chargeable consideration falls to be paid or provided on one or more future dates of which at least one falls, or may fall, more than 6 months after the effective date of the transaction.
- (2) An application under this section must—
- (a) be in the form specified by the Tax Authority, and
  - (b) contain the information specified by the Tax Authority.
- (3) An application under this section does not affect the buyer's obligations as regards payment of tax in respect of chargeable consideration that—
- (a) has already been paid or provided at the time the application is made, or
  - (b) is not contingent and whose amount is ascertained or ascertainable at the time the application is made.
- (4) Subsection (3) applies as regards both the time of payment and the calculation of the amount payable.
- (5) Unless the Scottish Ministers provide otherwise by order, this section does not apply to consideration so far as it consists of rent.

#### **42 Regulations about applications under section 41**

- (1) The Scottish Ministers may, by regulations, make further provision about applications under section 41.
- (2) The regulations may in particular—
- (a) specify when an application is to be made,
  - (b) require the buyer to provide such information as the Tax Authority may reasonably require for the purposes of determining whether to accept an application,
  - (c) specify the grounds on which an application may be refused,
  - (d) specify the procedure for reaching a decision on the application,
  - (e) make provision for postponing payment of tax when an application has been made,
  - (f) provide for the effect of accepting an application,
  - (g) require the buyer to make a return or further return, and to make such payments or further payments of tax as may be specified, in such circumstances as may be specified.
- (3) Regulations under this section may also provide that where the circumstances in subsection (4) arise—
- (a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply in relation to the payment, and
  - (b) instead, any necessary adjustment is to be made in accordance with the regulations.
- (4) The circumstances are—
- (a) a payment is made as mentioned in section 41(3), and

- (b) an application under this section is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment.

### **CHAPTER 3**

#### REGISTRATION OF LAND TRANSACTIONS ETC.

#### **43 Return to be made and tax paid before application for registration**

- (1) The Keeper of the Registers of Scotland (“the Keeper”) may not accept an application for registration of a document effecting or evidencing a notifiable transaction unless—
  - (a) a land transaction return has been made in relation to the transaction, and
  - (b) any tax payable in respect of the transaction has been paid.
- (2) The Tax Authority must provide the Keeper with such information as the Keeper reasonably requires to comply with subsection (1).
- (3) In this section, “registration” means registration or recording in any register under the management and control of the Keeper.
- (4) For the purposes of subsection (1)(b), tax is treated as paid if arrangements satisfactory to the Tax Authority are made for the payment of the tax.
- (5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

### **PART 5**

#### APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

#### **44 Companies and other organisations**

- (1) Everything to be done by an organisation under this Act is to be done by the organisation acting through—
  - (a) the proper officer of the organisation, or
  - (b) another person having for the time being the express, implied or apparent authority of the organisation to act on its behalf for the purpose.
- (2) Subsection (1)(b) does not apply where a liquidator has been appointed for the organisation.
- (3) For the purposes of this Act—
  - (a) the proper officer of a company is the secretary, or person acting as secretary, of the company,
  - (b) the proper officer of an unincorporated association (or of a company that does not have a proper officer within paragraph (a)) is the treasurer, or person acting as treasurer, of the association or, as the case may be, the company.
- (4) But, where a liquidator or administrator has been appointed for the organisation, the liquidator or, as the case may be, the administrator is the proper officer.

- (5) If two or more persons are appointed to act jointly or concurrently as the administrator of the organisation, the reference to the administrator in subsection (4) is to—
- (a) such one of them as is specified in a notice given to the Tax Authority by those persons for the purposes of this section, or
  - (b) where the Tax Authority is not so notified, such one or more of those persons as the Tax Authority may designate as the proper officer for those purposes.
- (6) In this section, “organisation” means—
- (a) a company,
  - (b) an unincorporated association.

#### **45 Unit trust schemes**

- (1) This Act (with the exception of the provisions mentioned in subsection (8)) applies in relation to a unit trust scheme as if—
- (a) the trustees were a company, and
  - (b) the rights of the unit holders were shares in the company.
- (2) Each of the parts of an umbrella scheme is regarded for the purposes of this Act as a separate unit trust scheme and the umbrella scheme as a whole is not so regarded.
- (3) An “umbrella scheme” means a unit trust scheme—
- (a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and
  - (b) under which the participants are entitled to exchange rights in one pool for rights in another.
- (4) A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.
- (5) In this Act—
- “unit trust scheme” has the same meaning as in the Financial Services and Markets Act 2000 (c.8), and
  - “unit holder” means a participant in a unit trust scheme.
- (6) The Scottish Ministers may, by regulations, provide that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Act.
- (7) Section 620 of the Corporation Tax Act 2010 (c.4) (court investment funds treated as authorised unit trusts) applies for the purposes of this Act as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme.
- (8) A unit trust scheme is not to be treated as a company for the purposes of schedules 10 (group relief) and 11 (reconstruction relief and acquisition relief).

#### **46 Open-ended investment companies**

- (1) The Scottish Ministers may, by regulations, make such provision as they consider appropriate for securing that the provisions of this Act have effect in relation to—

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- (a) open-ended investment companies of such description as may be prescribed in the regulations, and
  - (b) transactions involving such companies,
- in a manner corresponding, subject to such modifications as the Scottish Ministers consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such trusts.
- (2) The regulations may, in particular, make provision—
- (a) modifying the operation of any provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme,
  - (b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Act.
- (3) In this section—
- “open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000 (c.8),
  - “umbrella scheme” has the same meaning as in section 45.

#### **47 Residential property holding companies**

- (1) The Scottish Ministers may, by regulations, provide for qualifying transfers of interests in residential property holding companies—
- (a) to be treated as land transactions, and
  - (b) to be chargeable transactions.
- (2) A “residential property holding company” means a company—
- (a) whose sole or main activity is holding or investing in chargeable interests in residential property,
  - (b) whose property consists of or includes chargeable interests in residential property, and
  - (c) whose shares are not listed on a recognised stock exchange.
- (3) For the purposes of subsection (2)(a) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.
- (4) A “qualifying transfer” is a transfer of an interest in such a company that results in the transferee acquiring the right to occupy some or all of the company’s residential property.
- (5) Regulations under subsection (1) may in particular make provision, or further provision, about—
- (a) the kinds of interest, transfer of which is a qualifying transfer,
  - (b) the kinds of transfers which are and are not qualifying transfers,
  - (c) the rights which are rights to occupy a company’s residential property for the purposes of such transfers,
  - (d) the chargeable consideration in the case of such transfers,

- (e) the tax bands and tax rates that are to apply to such transfers (including specifying tax bands and tax rates for such transfers),
  - (f) the person who is to be liable to pay the tax,
  - (g) the application or disapplication of any reliefs in relation to such transfers.
- (6) Regulations under subsection (1) may also provide that, for the purposes of this section, “residential property” includes such other kinds of property as may be specified in the regulations.
- (7) Regulations under subsection (1) may modify any enactment (including this Act).

#### **48 Joint buyers**

- (1) This section applies to a land transaction where there are two or more buyers who are or will be jointly entitled to the interest acquired.
- (2) The general rules are that—
- (a) any obligation of the buyer under this Act in relation to the transaction is an obligation of the buyers jointly but may be discharged by any of them,
  - (b) anything required or authorised by this Act to be done in relation to the buyer must be done by or in relation to all of them, and
  - (c) any liability of the buyer under this Act in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the buyers.
- (3) The general rules are subject to the following provisions—
- (a) if a return is required in relation to the transaction, a single return must be made,
  - (b) the declaration required by section 36(1) or (2)(a) (declaration that return is complete and correct) must be made by all the buyers.
- (4) This section has effect subject to—
- (a) the provisions of schedule 17 (partnerships), and
  - (b) paragraphs 15 to 18 of schedule 18 (trusts).

#### **49 Partnerships**

- (1) Schedule 17 makes provision about the application of this Act in relation to partnerships.
- (2) The Scottish Ministers may, by regulations, modify schedule 17.

#### **50 Trusts**

- (1) Schedule 18 makes provision about the application of this Act in relation to trusts.
- (2) The Scottish Ministers may, by regulations, modify schedule 18.

#### **51 Persons acting in a representative capacity etc.**

- (1) The personal representatives of a person who is the buyer in a land transaction—
- (a) are responsible for discharging the obligations of the buyer under this Act in relation to the transaction, and

- (b) may deduct any payment made by them under this Act out of the assets and effects of the deceased person.
- (2) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Act in relation to a transaction affecting that property as if the property were not under the direction and control of the court.

## PART 6

### APPLICATION OF ACT TO LEASES AND LICENCES

#### *Leases*

#### **52 Application of this Act to leases**

- (1) Schedule 19 makes provision about the application of this Act to chargeable transactions involving leases, including provision for the calculation of the tax chargeable in relation to such transactions.
- (2) The Scottish Ministers may, by regulations, modify schedule 19.

#### *Licences*

#### **53 Application of this Act to licences**

- (1) The Scottish Ministers may, by regulations, prescribe descriptions of non-residential licences to occupy property, transactions in relation to which are to be land transactions for the purposes of this Act.
- (2) The regulations may also make provision, among other things—
  - (a) for transactions, which result in the acquisition of interests in licences, to be land transactions,
  - (b) for what the chargeable consideration is to be in relation to a licence,
  - (c) for the determination of the amount or value of that chargeable consideration,
  - (d) for the calculation of the tax chargeable,
  - (e) specifying that certain land transactions relating to a licence are not to be notifiable under section 30.
- (3) Regulations under this section may modify any enactment (including this Act).



## PART 7

### GENERAL AND INTERPRETATION

#### *The Tax Authority*

#### **54 The Tax Authority**

- (1) For the purposes of this Act, the Tax Authority is the Scottish Ministers.
- (2) The Scottish Ministers may, by order, amend subsection (1) to provide that another person is the Tax Authority.

#### **55 Delegation of functions to Keeper**

- (1) The Tax Authority may delegate the exercise of any of its functions under this Act to the Keeper of the Registers of Scotland.
- (2) But subsection (1) does not apply to any function of making an order or regulations.
- (3) A delegation under this section may be varied or revoked at any time.
- (4) A delegation under this section does not affect the Tax Authority's responsibility for the exercise of any functions delegated or the Authority's ability to carry out such functions.
- (5) The Tax Authority may reimburse the Keeper for any expenditure incurred which is attributable to the exercise by the Keeper of functions delegated under this section.

#### **56 Review and appeal**

- (1) The Scottish Ministers may, by regulations, make provision for—
  - (a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,
  - (b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.
- (2) Regulations under this section may modify any provision made by or under this Act.
- (3) In this section, “specified” means specified in the regulations.

#### *Linked transactions*

#### **57 Linked transactions**

- (1) Transactions are linked for the purposes of this Act if they form part of a single scheme, arrangement or series of transactions between the same seller and buyer or, in either case, persons connected with them.
- (2) Where there are two or more linked transactions with the same effective date, the buyer, or all of the buyers if there is more than one, may make a single return as if all of those transactions that are notifiable were a single notifiable transaction.

- (3) Where two or more buyers make a single return in respect of linked transactions, section 48 applies as if—
- (a) the transaction in question were a single transaction, and
  - (b) those buyers were buyers acting jointly.
- (4) This section is subject to section 13(1) (exchanges).

*Connected persons***58 Connected persons**

Section 1122 of the Corporation Tax Act 2010 (c.4) (connected persons) has effect for the purposes of the following provisions—

- (a) section 14,
- (b) section 22,
- (c) section 23,
- (d) section 57,
- (e) paragraphs 1, 11 and 13 of schedule 2,
- (f) schedule 4,
- (g) Part 5 of schedule 5,
- (h) schedule 8,
- (i) schedule 17 (but see paragraph 49),
- (j) paragraph 17 of schedule 19.

*Interpretation***59 Meaning of “residential property”**

- (1) In this Act “residential property” means—
- (a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use,
  - (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other structure on such land), or
  - (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).
- (2) Accordingly, “non-residential property” means any property that is not residential property.
- (3) For the purposes of subsection (1) a building used for any of the following purposes is used as a dwelling—
- (a) residential accommodation for school pupils,
  - (b) residential accommodation for students, other than accommodation falling within subsection (4)(b),
  - (c) residential accommodation for members of the armed forces,
  - (d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (4).

- (4) For the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling—
- (a) a home or other institution providing residential accommodation for children,
  - (b) a hall of residence for students in further or higher education,
  - (c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder,
  - (d) a hospital or hospice,
  - (e) a prison or similar establishment,
  - (f) a hotel or inn or similar establishment.
- (5) Where a building is used for a purpose specified in subsection (4), no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use.
- (6) Where a building that is not in use is suitable for use for at least one of the purposes specified in subsection (3) and at least one of those specified in subsection (4)—
- (a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same paragraph, no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use,
  - (b) otherwise, the building is to be treated for those purposes as suitable for use as a dwelling.
- (7) In this section “building” includes part of a building.
- (8) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of this Act as it applies in relation to that transaction, those dwellings are treated as not being residential property.
- (9) The Scottish Ministers may, by order—
- (a) amend subsections (3) and (4) so as to change or clarify the cases where use of a building is, or is not to be, use of a building as a dwelling for the purposes of subsection (1),
  - (b) amend or repeal subsection (8).

## **60 Meaning of “major interest” in land**

References in this Act to a “major interest” in land are to—

- (a) ownership of land, or
- (b) the tenant’s right over or interest in land subject to a lease.

## **61 Meaning of “subject-matter” and “main subject-matter”**

References in this Act to the subject-matter of a land transaction or a contract are to the chargeable interest acquired (the “main subject-matter”) by virtue of the transaction or contract, together with any interest or right pertaining to it that is acquired with it.

**62 Meaning of “market value”**

For the purpose of this Act “market value” is to be determined as for the purposes of the Taxation of Chargeable Gains Act 1992 (c.12) (see sections 272 to 274 of that Act).

**63 Meaning of “effective date” of a transaction**

- (1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Act is—
  - (a) the date of completion, or
  - (b) such alternative date as the Scottish Ministers may prescribe by regulations.
- (2) Other provision as to the effective date of certain land transactions is made by—
  - (a) section 10(2) (substantial performance of contract without settlement),
  - (b) section 11(4) (substantial performance of contract requiring conveyance to third party),
  - (c) section 12(4) (options and rights of pre-emption), and
  - (d) paragraph 25(2) of schedule 19 (agreement for lease substantially performed etc.).

**64 Meaning of “completion”**

- (1) In this Act, “completion” means—
  - (a) in relation to a lease, when it is executed by the parties or constituted by any means,
  - (b) in relation to any other transaction, the settlement of the transaction.
- (2) References to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract.

**65 General interpretation**

In this Act—

- “acquisition relief” means relief under Part 3 of schedule 11,
- “charities relief” means relief under schedule 13,
- “company” means (except as otherwise expressly provided) a body corporate other than a partnership,
- “contract” includes any agreement,
- “conveyance” includes any instrument,
- “employee” includes an office-holder and related expressions have a corresponding meaning,
- “group relief” means relief under schedule 10,
- “jointly entitled” means entitled as joint owners or common owners,
- “land transaction return” means a return under section 29(1),
- “personal representatives”, in relation to a person, include that person’s executors,
- “reconstruction relief” means relief under Part 2 of schedule 11,
- “registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),
- “the tax” means land and buildings transaction tax.

**66 Index of defined expressions**

Schedule 20 contains an index of expressions defined or otherwise explained in this Act.

**PART 8**

## FINAL PROVISIONS

*Ancillary provision***67 Ancillary provision**

- (1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

*Subordinate legislation***68 Subordinate legislation**

- (1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations includes the power to make—
  - (a) different provision for different cases or descriptions of case or for different purposes,
  - (b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.
- (2) Orders and regulations under the following provisions are subject to the affirmative procedure—
  - (a) section 5(4),
  - (b) section 24(1) (but only the first order),
  - (c) section 27(3),
  - (d) section 49(2),
  - (e) section 50(2),
  - (f) section 52(2),
  - (g) section 53(1),
  - (h) section 54(2),
  - (i) section 59(9),
  - (j) paragraph 8 of schedule 1,
  - (k) paragraph 3 of schedule 19 (but only the first order),
  - (l) paragraph 7(1) of that schedule.
- (3) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are also subject to the affirmative procedure—
  - (a) section 17(2),

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- (b) section 47(1),
  - (c) section 56(1),
  - (d) section 67(1).
- (4) An order mentioned in subsection (5)—
- (a) must be laid before the Scottish Parliament, and
  - (b) ceases to have effect on the expiry of the period of 28 days beginning with the date on which it is made unless, before the expiry of that period, it is approved by resolution of the Parliament.
- (5) The order is a second or subsequent order under—
- (a) section 24(1), or
  - (b) paragraph 3 of schedule 19.
- (6) In reckoning any period of 28 days for the purposes of subsection (4)(b), no account is to be taken of any period during which the Scottish Parliament is—
- (a) dissolved, or
  - (b) in recess for more than 4 days.
- (7) All other orders and regulations under this Act are subject to the negative procedure.
- (8) This section does not apply to an order under section 70(2).

#### *Crown application*

### **69 Crown application**

Nothing in this Act affects Her Majesty in Her private capacity.

#### *Commencement and short title*

### **70 Commencement**

- (1) This section and sections 54, 55, 67, 68, 69 and 71 come into force on the day of Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.
- (3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

### **71 Short title**

The short title of this Act is the Land and Buildings Transaction Tax (Scotland) Act 2013.

SCHEDULE 1  
(introduced by section 16)  
EXEMPT TRANSACTIONS

*No chargeable consideration*

- 1 A land transaction is an exempt transaction if there is no chargeable consideration for the transaction.

*Acquisitions by the Crown*

- 2 A land transaction under which the buyer is any of the following is an exempt transaction—
- (a) the Scottish Ministers,
  - (b) the Scottish Parliamentary Corporate Body,
  - (c) a Minister of the Crown,
  - (d) the Corporate Officer of the House of Lords,
  - (e) the Corporate Officer of the House of Commons,
  - (f) a Northern Ireland department,
  - (g) the Northern Ireland Assembly Commission,
  - (h) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government,
  - (i) the National Assembly for Wales Commission,
  - (j) the National Assembly for Wales.

*Residential leases and licences*

- 3 (1) The grant, assignation or renunciation of—
- (a) a lease of residential property (which is not a qualifying lease), or
  - (b) a licence to occupy property (which is not a prescribed non-residential licence),
- is an exempt transaction.
- (2) For the purposes of sub-paragraph (1)(a), a transaction in respect of a lease of residential property is exempt only if—
- (a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
  - (b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.
- (3) In sub-paragraph (1)(a), “qualifying lease” has the same meaning as in the Long Leases (Scotland) Act 2012 (asp 9).
- (4) In sub-paragraph (1)(b), “prescribed non-residential licence” means a licence of a description prescribed by the Scottish Ministers in regulations under section 53(1).

*Transactions in connection with divorce etc.*

- 4 A transaction between one party to a marriage and the other is an exempt transaction if it is effected—

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- (a) in pursuance of an order of a court made on granting, in respect of the parties, a decree of divorce, nullity of marriage or judicial separation,
- (b) in pursuance of an order of a court made in connection with the dissolution or annulment of the marriage, or the parties' judicial separation, at any time after the granting of such a decree,
- (c) in pursuance of—
  - (i) an order of a court made at any time under section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or
  - (ii) an incidental order of a court made under section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act,
- (d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the marriage, their judicial separation or the making of a separation order in respect of them.

*Transactions in connection with dissolution of civil partnership etc.*

- 5 A transaction between one party to a civil partnership and the other is an exempt transaction if it is effected—
- (a) in pursuance of an order of a court made on granting, in respect of the parties, an order or decree for the dissolution or annulment of the civil partnership or their judicial separation,
  - (b) in pursuance of an order of a court made in connection with the dissolution or annulment of the civil partnership, or the parties' judicial separation, at any time after the granting of such an order or decree for dissolution, annulment or judicial separation as mentioned in paragraph (a),
  - (c) in pursuance of—
    - (i) an order of a court made at any time under any provision of schedule 5 to the Civil Partnership Act 2004 (c.33) that corresponds to section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or
    - (ii) an incidental order of a court made under any provision of the Civil Partnership Act 2004 (c.33) that corresponds to section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act of 1985,
  - (d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the civil partnership, their judicial separation or the making of a separation order in respect of them.

*Assents and appropriations by personal representatives*

- 6 (1) The acquisition of property by a person in or towards satisfaction of the person's entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is an exempt transaction.
- (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.



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- (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 9(1) of schedule 2.
- (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.

*Variation of testamentary dispositions etc.*

- 7 (1) A transaction following a person’s death that varies a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property of which the deceased was competent to dispose is an exempt transaction if the following conditions are met.
- (2) The conditions are—  
(a) that the transaction is carried out within the period of 2 years after a person’s death, and  
(b) that no consideration in money or money’s worth other than the making of a variation of another such disposition is given for it.
- (3) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 9(3) of schedule 2.
- (4) This paragraph applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

*Power to add, vary or remove exemptions*

- 8 The Scottish Ministers may, by regulations, modify this schedule so as to—  
(a) add a description of land transaction as an exempt transaction,  
(b) provide that a description of land transaction is no longer an exempt transaction,  
(c) vary a description of an exempt transaction.

SCHEDULE 2

*(introduced by section 17)*

CHARGEABLE CONSIDERATION

*Money or money’s worth*

- 1 The chargeable consideration for a transaction is, except as otherwise provided, any consideration in money or money’s worth given for the subject-matter of the transaction, directly or indirectly, by the buyer or a person connected with the buyer.

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### *Value added tax*

- 2 The chargeable consideration for a transaction includes any value added tax chargeable in respect of the transaction, other than value added tax chargeable by virtue of an option to tax any land under Part 1 of schedule 10 to the Value Added Tax Act 1994 (c.23) made after the effective date of the transaction.

### *Postponed consideration*

- 3 The amount or value of the chargeable consideration for a transaction is to be determined without any discount for postponement of the right to receive it or any part of it.

### *Just and reasonable apportionment*

- 4 (1) For the purposes of this Act consideration attributable—
- (a) to two or more land transactions, or
  - (b) in part to a land transaction and in part to another matter, or
  - (c) in part to matters making it chargeable consideration and in part to other matters,
- is to be apportioned on a just and reasonable basis.
- (2) If the consideration is not so apportioned, this Act has effect as if it had been so apportioned.
- (3) For the purposes of this paragraph any consideration given for what is in substance one bargain is to be treated as attributable to all the elements of the bargain, even though—
- (a) separate consideration is, or purports to be, given for different elements of the bargain, or
  - (b) there are, or purport to be, separate transactions in respect of different elements of the bargain.

### *Exchanges*

- 5 (1) This paragraph applies to determine the chargeable consideration where one or more land transactions are entered into by a person as buyer (alone or jointly) wholly or partly in consideration of one or more other land transactions being entered into by that person (alone or jointly) as seller.
- (2) In this paragraph—
- “relevant acquisition” means a relevant transaction entered into as buyer,
  - “relevant disposal” means a relevant transaction entered into as seller, and
  - “relevant transaction” means any of those transactions.
- (3) The following rules apply if the subject-matter of any of the relevant transactions is a major interest in land—
- (a) where a single relevant acquisition is made, the chargeable consideration for the acquisition is the greater of—
    - (i) the amount determined under sub-paragraph (4) in respect of the acquisition, or
    - (ii) the amount which would be the chargeable consideration for the acquisition ignoring this paragraph,

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- (b) where two or more relevant acquisitions are made, the chargeable consideration for each relevant acquisition is the greater of—
- (i) the amount determined under sub-paragraph (4) in respect of that acquisition, or
  - (ii) the amount which would be the chargeable consideration for that acquisition ignoring this paragraph.
- (4) The amount mentioned in sub-paragraph (3)(a)(i) and (b)(i) is—
- (a) the market value of the subject-matter of the acquisition, or
  - (b) if the acquisition is the grant of a lease, the rent.
- (5) The following rules apply if the subject-matter of none of the relevant transactions is a major interest in land—
- (a) where a single relevant acquisition is made in consideration of one or more relevant disposals, the chargeable consideration for the acquisition is the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisition,
  - (b) where two or more relevant acquisitions are made in consideration of one or more relevant disposals, the chargeable consideration for each relevant acquisition is the appropriate proportion of the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisitions.
- (6) For the purposes of sub-paragraph (5)(b) the appropriate proportion is—
- $$\frac{MV}{TMV}$$
- where—
- MV is the market value of the subject-matter of the acquisition for which the chargeable consideration is being determined, and
  - TMV is the total market value of the subject-matter of all the relevant acquisitions.
- (7) This paragraph is subject to paragraph 6 (partition etc.: disregard of existing interests).
- (8) This paragraph does not apply in a case to which paragraph 17 (arrangements involving public or educational bodies) applies.

*Partition etc.: disregard of existing interest*

- 6 In the case of a land transaction giving effect to a partition or division of a chargeable interest to which persons are jointly entitled, the share of the interest held by the buyer immediately before the partition or division does not count as chargeable consideration.

*Valuation of non-monetary consideration*

- 7 Except as otherwise expressly provided, the value of any chargeable consideration for a land transaction, other than—
- (a) money (whether in sterling or another currency), or
  - (b) debt as defined for the purposes of paragraph 8 (debt as consideration),

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is to be taken to be its market value at the effective date of the transaction.

*Debt as consideration*

- 8 (1) Where the chargeable consideration for a land transaction consists in whole or in part of—
- (a) the satisfaction or release of a debt due to the buyer or owed by the seller, or
  - (b) the assumption of existing debt by the buyer,
- the amount of debt satisfied, released or assumed is to be taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction.
- (2) Where—
- (a) 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 buyer, and that assumption of debt constitutes chargeable consideration for the transaction.
- (3) 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 were two or more such persons immediately afterwards,
- the amount of secured debt assumed is to 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 the person's undivided share of the property at that time.
- (4) If the effect of this paragraph would be that the amount of the chargeable consideration for the transaction exceeded the market value of the subject-matter of the transaction, the amount of the chargeable consideration is treated as limited to that value.
- (5) In this paragraph—
- “debt” has the same meaning as in paragraph 6(4) of schedule 1,
  - “existing debt”, in relation to a transaction, means debt created or arising before the effective date of, and otherwise than in connection with, the transaction, and references to the amount of a debt are to the principal amount payable or, as the case may be, the total of the principal amounts payable, together with the amount of any interest that has accrued due on or before the effective date of the transaction.

*Cases where conditions for exemption not fully met*

- 9 (1) Where a land transaction would be an exempt transaction under paragraph 6 of schedule 1 (assents and appropriations by personal representative) 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.

- (2) In this paragraph, “secured debt” has the same meaning as in paragraph 6(4) of schedule 1.
- (3) Where a land transaction would be an exempt transaction under paragraph 7 of schedule 1 (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.

#### *Conversion of amounts in foreign currency*

- 10 (1) References in this Act to the amount or value of the consideration for a transaction are to its amount or value in sterling.
- (2) For the purposes of this Act the sterling equivalent of an amount expressed in another currency is to be ascertained by reference to the London closing exchange rate on the effective date of the transaction (unless the parties have used a different rate for the purposes of the transaction).

#### *Carrying out of works*

- 11 (1) Where the whole or part of the consideration for a land transaction consists of the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, then—
  - (a) to the extent that the conditions specified in sub-paragraph (2) are met, the value of the works does not count as chargeable consideration, and
  - (b) to the extent that those conditions are not met, the value of the works is to be taken into account as chargeable consideration.
- (2) The conditions are—
  - (a) that the works are carried out after the effective date of the transaction,
  - (b) that the works are carried out on land acquired or to be acquired under the transaction, and
  - (c) that it is not a condition of the transaction that the works are carried out by the seller or a person connected with the seller.
- (3) Where, by virtue of section 10(3) (substantial performance of contract without completion), 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), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.
- (4) In this paragraph—
  - (a) references to the acquisition of land are to the acquisition of a major interest in it,
  - (b) the value of the works is to be taken to be the amount that would have to be paid in the open market for the carrying out of the works in question.
- (5) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

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*Provision of services*

- 12 (1) Where the whole or part of the consideration for a land transaction consists of the provision of services (other than the carrying out of works to which paragraph 11 applies), the value of that consideration is to be taken to be the amount that would have to be paid in the open market to obtain those services.
- (2) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

*Land transaction entered into by reason of employment*

- 13 Where a land transaction is entered into by reason of the buyer's employment, or that of a person connected with the buyer, the consideration for the transaction is to be taken to be not less than the market value of the subject-matter of the transaction as at the effective date of the transaction.

*Indemnity given by buyer*

- 14 Where the buyer agrees to indemnify the seller in respect of liability to a third party arising from breach of an obligation owed by the seller in relation to the land that is the subject of the transaction, neither the agreement nor any payment made in pursuance of it counts as chargeable consideration.

*Buyer bearing inheritance tax liability*

- 15 Where—
- (a) there is a land transaction that is—
    - (i) a transfer of value within section 3 of the Inheritance Tax Act 1984 (c.51) (transfers of value), or
    - (ii) a disposition, effected by will or under the law of intestacy, of a chargeable interest comprised in the estate of a person immediately on the person's death, and
  - (b) the buyer is or becomes liable to pay, agrees to pay or does in fact pay any inheritance tax due in respect of the transfer or disposition,
- the buyer's liability, agreement or payment does not count as chargeable consideration for the transaction.

*Buyer bearing capital gains tax liability*

- 16 (1) Where—
- (a) there is a land transaction under which the chargeable interest in question—
    - (i) is acquired otherwise than by a bargain made at arm's length, or
    - (ii) is treated by section 18 of the Taxation of Chargeable Gains Act 1982 (c.12) (connected persons) as so acquired, and
  - (b) the buyer is or becomes liable to pay, or does in fact pay, any capital gains tax due in respect of the corresponding disposal of the chargeable interest,
- the buyer's liability or payment does not count as chargeable consideration for the transaction.
- (2) Sub-paragraph (1) does not apply if there is chargeable consideration for the transaction (disregarding the liability or payment referred to in sub-paragraph (1)(b)).

*Arrangements involving public or educational bodies*

- 17 (1) This paragraph applies in any case where arrangements are entered into under which—
- (a) there is a transfer of the ownership, or the grant or assignation of a lease, of land by a qualifying body (A) to a non-qualifying body (B) (“the main transfer”),
  - (b) in consideration (whether in whole or in part) of the main transfer there is a grant by B to A of a lease or sub-lease of the whole, or substantially the whole, of that land (“the leaseback”),
  - (c) B undertakes to carry out works or provide services to A, and
  - (d) some or all of the consideration given by A to B for the carrying out of those works or the provision of those services is consideration in money,
- whether or not there is also a transfer of the ownership, or the grant or assignation of a lease, of any land by A to B (a “transfer of surplus land”).
- (2) The following are qualifying bodies—
- (a) public bodies within paragraph 4 of schedule 16,
  - (b) grant-aided schools within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c.44), and
  - (c) any body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6).
- (3) The Scottish Ministers may, by order, modify sub-paragraph (2) so as to—
- (a) add a person or body to the list of qualifying bodies,
  - (b) remove a person or body from that list,
  - (c) vary the description of any qualifying body.
- (4) The following do not count as chargeable consideration for the main transfer or any transfer of surplus land—
- (a) the leaseback,
  - (b) the carrying out of building works by B for A, or
  - (c) the provision of services by B to A.
- (5) The chargeable consideration for the leaseback does not include—
- (a) the main transfer,
  - (b) any transfer of surplus land, or
  - (c) the consideration in money paid by A to B for the building works or other services referred to in sub-paragraph (4).
- (6) Sub-paragraphs (4) and (5) are to be disregarded for the purposes of determining whether the land transaction in question is notifiable.

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

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### SCHEDULE 3

*(introduced by section 27)*

#### SALE AND LEASEBACK RELIEF

##### *The relief*

- 1 The leaseback element of a sale and leaseback arrangement is exempt from charge if the qualifying conditions are met.

##### *Sale and leaseback arrangements*

- 2 A sale and leaseback arrangement is an arrangement under which—
- (a) a person (A) transfers or grants to another person (B) a major interest in land (the “sale”), and
  - (b) out of that interest B grants a lease to A (the “leaseback”).

##### *Qualifying conditions*

- 3 The qualifying conditions are—
- (a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
  - (b) that the only other consideration (if any) for the sale is the payment of money (whether in sterling or another currency) or the assumption, satisfaction or release of a debt (or both), and
  - (c) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see schedule 10) at that date.

##### *Interpretation*

- 4 In this schedule, “debt” has the same meaning as in paragraph 6(4) of schedule 1.

### SCHEDULE 4

*(introduced by section 27)*

#### RELIEF FOR CERTAIN ACQUISITIONS OF RESIDENTIAL PROPERTY

### **PART 1**

#### INTRODUCTORY

##### *Overview of reliefs*

- 1 (1) This schedule provides for relief in the case of certain acquisitions of residential property.
- (2) It is arranged as follows—
- Part 2 provides for relief in the case of an acquisition by a house-building company from an individual acquiring a new dwelling,



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Part 3 provides for relief in the case of an acquisition by a property trader from an individual acquiring a new dwelling,

Part 4 provides for relief in the case of an acquisition by a property trader from an individual where a chain of transactions breaks down,

Part 5 provides for the withdrawal of those reliefs in certain circumstances,

Part 6 defines expressions used in this schedule.

## PART 2

### ACQUISITION BY HOUSE-BUILDING COMPANY FROM INDIVIDUAL ACQUIRING NEW DWELLING

#### *Full relief*

- 2 Where a dwelling (“the old dwelling”) is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

#### *Partial relief*

- 3 Where qualifying conditions (a) to (d) but not (e) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

#### *Qualifying conditions*

- 4 In this Part of this schedule, the qualifying conditions are—
- (a) that the individual (whether alone or with other individuals) acquires a new dwelling from the house-building company,
  - (b) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,
  - (c) that the individual intends to occupy the new dwelling as the individual’s only or main residence,
  - (d) that each acquisition is entered into in consideration of the other, and
  - (e) that the area of land acquired by the house-building company does not exceed the permitted area.

## PART 3

### ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL ACQUIRING NEW DWELLING

#### *Full relief*

- 5 Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

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*Partial relief*

- 6 Where qualifying conditions (a) to (e) but not (f) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

*Qualifying conditions*

- 7 In this Part of this schedule, the qualifying conditions are—
- (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies,
  - (b) that the individual (whether alone or with other individuals) acquires a new dwelling from a house-building company,
  - (c) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,
  - (d) that the individual intends to occupy the new dwelling as the individual’s only or main residence,
  - (e) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the old dwelling,
    - (ii) to grant a lease or licence of the old dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
  - (f) that the area of land acquired by the property trader does not exceed the permitted area.
- 8 Paragraph 7(e)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

**PART 4**

ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL  
WHERE CHAIN OF TRANSACTIONS BREAKS DOWN

*Full relief*

- 9 Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

*Partial relief*

- 10 Where qualifying conditions (a) to (g) but not (h) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

### *Qualifying conditions*

- 11 In this Part of this schedule, the qualifying conditions are—
- (a) that the individual has made arrangements to sell the old dwelling and acquire another dwelling (“the second dwelling”),
  - (b) that the arrangements to sell the old dwelling fail,
  - (c) that the acquisition of the old dwelling is made for the purpose of enabling the individual’s acquisition of the second dwelling to proceed,
  - (d) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in the circumstances mentioned in conditions (a) to (c),
  - (e) that the individual occupied the old dwelling as the individual’s only or main residence at some time in the period of 2 years ending with the date of its acquisition,
  - (f) that the individual intends to occupy the second dwelling as the individual’s only or main residence,
  - (g) that the property trader does not intend—
    - (i) to spend more than the permitted amount on refurbishment of the old dwelling,
    - (ii) to grant a lease or licence of the old dwelling, or
    - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling,and
  - (h) that the area of land acquired does not exceed the permitted area.
- 12 Paragraph 11(g)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

## **PART 5**

### WITHDRAWAL OF RELIEF

#### *Introductory*

- 13 (1) Relief under this schedule is withdrawn in the following circumstances.
- (2) Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.

#### *Relief under Part 3*

- 14 Relief under Part 3 of this schedule (acquisition by property trader from individual acquiring new dwelling) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling,
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.
- 15 Paragraph 14(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

*Relief under Part 4*

- 16 Relief under Part 4 of this schedule (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling,
  - (b) grants a lease or licence of the old dwelling, or
  - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.
- 17 Paragraph 16(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

**PART 6**

INTERPRETATION

*Meaning of “dwelling” and “new dwelling”*

- 18 “Dwelling” includes land occupied and enjoyed with the dwelling as its garden or grounds.
- 19 A building or part of a building is a “new dwelling” if—
- (a) it has been constructed for use as a single dwelling and has not previously been occupied, or
  - (b) it has been adapted for use as a single dwelling and has not been occupied since its adaptation.

*Meaning of “permitted area”*

- 20 “The permitted area”, in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed—
- (a) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or
  - (b) such larger area as is required for the reasonable enjoyment of the dwelling as a dwelling having regard to its size and character.
- 21 Where paragraph 20(b) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied.

*Meaning of “acquisition” and “market value” in relation to dwelling and permitted area*

- 22 References in this schedule to—
- (a) the acquisition of a dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling,
  - (b) the market value of a dwelling and of the permitted area are, respectively, to the market value of that major interest in the dwelling and of that interest so far as it relates to that area.

*Meaning of “house-building company”*

- 23 A “house-building company” means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.

24 References in this schedule to such a company include any company connected with it.

*Meaning of “property trader” and “principal”*

25 (1) A “property trader” means an entity listed in sub-paragraph (2) that carries on the business of buying and selling dwellings.

(2) The entities are—

- (a) a company,
- (b) a limited liability partnership,
- (c) a partnership whose partners are all either companies or limited liability partnerships.

(3) A “principal”—

- (a) in relation to a company, means a director,
- (b) in relation to a limited liability partnership, means a member,
- (c) in relation to a partnership mentioned in sub-paragraph (2)(c) means a partner or a principal of a partner.

26 For the purposes of this schedule—

- (a) anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that property trader, and
- (b) references to the principals or employees of a property trader include the principals or employees of any such company.

*Meaning of “refurbishment” and “the permitted amount”*

27 “Refurbishment” of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include—

- (a) cleaning the dwelling, or
- (b) works required solely for the purpose of ensuring that the dwelling meets minimum safety standards.

28 The “permitted amount”, in relation to the refurbishment of a dwelling, is set out in the following table—

<b>Consideration for acquisition of the dwelling</b>	<b>Permitted amount</b>
Not more than £200,000	£10,000
More than £200,000 but not more than £400,000	5% of the consideration
More than £400,000	£20,000

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## SCHEDULE 5

(introduced by section 27)

### MULTIPLE DWELLINGS RELIEF

#### PART 1

##### INTRODUCTORY

###### *Overview of relief*

- 1 (1) This schedule provides for relief in the case of certain land transactions involving multiple dwellings.
- (2) It is arranged as follows—
  - Part 2 identifies the transactions to which this schedule applies,
  - Part 3 defines key terms,
  - Part 4 describes the relief available if a claim is made,
  - Part 5 provides for withdrawal of the relief,
  - Part 6 contains rules to determine what counts as a dwelling.

#### PART 2

##### TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES

###### *The rule*

- 2 This schedule applies to relevant transactions.
- 3 A relevant transaction is a transaction (other than a transaction to which schedule 19 (leases) applies) that is—
  - (a) within paragraph 4 or paragraph 5, and
  - (b) not excluded by paragraph 6.

###### *Single transaction relating to multiple dwellings*

- 4 A transaction is within this paragraph if its main subject-matter consists of—
  - (a) an interest in at least two dwellings, or
  - (b) an interest in at least two dwellings and other property.

###### *Linked transactions relating to multiple dwellings*

- 5 A transaction is within this paragraph if—
  - (a) its main subject-matter consists of—
    - (i) an interest in a single dwelling, or
    - (ii) an interest in a single dwelling and other property,
  - (b) it is one of a number of linked transactions, and
  - (c) the main subject-matter of at least one of the other linked transactions consists of—
    - (i) an interest in some other dwelling or dwellings, or

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(ii) an interest in some other dwelling or dwellings and other property.

*Excluded transactions*

- 6 A transaction is excluded by this paragraph if—
- (a) relief under schedule 9 (crofting community right to buy) is available for it, or
  - (b) relief under schedule 10 (group relief), 11 (reconstruction relief and acquisition relief) or 13 (charities relief)—
    - (i) is available for it, or
    - (ii) has been withdrawn from it.

**PART 3**

KEY TERMS

*Consideration attributable to dwellings and remaining property*

- 7 In relation to a relevant transaction—
- (a) the consideration attributable to dwellings is so much of the chargeable consideration for the transaction as is attributable to the dwellings,
  - (b) the consideration attributable to remaining property is the chargeable consideration for the transaction less the consideration attributable to dwellings.

*Dwellings*

- 8 “The dwellings” are, in relation to a relevant transaction, the dwelling or dwellings that are, or are part of, the main subject-matter of the transaction.

*Interest in a dwelling*

- 9 A reference in this schedule to an interest in a dwelling is to any chargeable interest in or over a dwelling.

**PART 4**

THE RELIEF

*Calculation of relief*

- 10 The amount of tax chargeable in relation to a relevant transaction is—  
 $(DT \times ND) + RT$

where—

- DT is the tax due in relation to a dwelling,
- ND is the number of dwellings that are, or are part of, the main subject-matter of the transaction, and
- RT is the tax due in relation to remaining property.

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- 11 However, if the result of paragraph 10 would be that the tax chargeable in relation to the transaction is less than the minimum prescribed amount, the tax chargeable is that amount.
- 12 The minimum prescribed amount is such proportion of the tax that would be chargeable in relation to the transaction but for the relief as may be prescribed by the Scottish Ministers by order.

*Tax due in relation to a dwelling*

- 13 The tax due in relation to a dwelling is determined as follows.
- Step 1*
- Find the total consideration attributable to dwellings, that is—
- (a) the consideration attributable to dwellings for the transaction, or
  - (b) where the transaction is one of a number of linked transactions, the sum of—
    - (i) the consideration attributable to dwellings for the transaction, and
    - (ii) the consideration attributable to dwellings for all other relevant transactions.
- Step 2*
- Divide the total consideration attributable to dwellings by total dwellings. “Total dwellings” is the total number of dwellings by reference to which the total consideration attributable to dwellings is calculated.
- Step 3*
- Calculate the amount of tax that would be due in relation to the relevant transaction were—
- (a) the chargeable consideration equal to the result obtained in Step 2,
  - (b) the transaction a residential property transaction, and
  - (c) the transaction not a linked transaction.
- The result is the tax due in relation to a dwelling.

*Tax due in relation to remaining property*

- 14 The tax due in relation to remaining property is determined as follows.
- Step 1*
- Calculate the amount of tax that would be due in respect of the transaction but for this schedule.
- Step 2*
- Divide the consideration attributable to remaining property by the chargeable consideration for the transaction.
- Step 3*
- Multiply the amount calculated in Step 1 by the fraction reached in Step 2. The result is the tax due in relation to remaining property.

*General*

- 15 “Attributable” means attributable on a just and reasonable basis.



## PART 5

### WITHDRAWAL OF RELIEF

#### *Full withdrawal of relief*

- 16 Relief under this schedule is withdrawn in relation to a relevant transaction if—
- (a) an event occurs in the relevant period, and
  - (b) had the event occurred immediately before the effective date of the transaction, the transaction would not have been a relevant transaction.
- 17 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the transaction but for the relief.

#### *Partial withdrawal of relief*

- 18 Relief under this schedule is partially withdrawn in relation to a relevant transaction if—
- (a) an event occurs in the relevant period, and
  - (b) had the event occurred immediately before the effect date of the transaction—
    - (i) the transaction would have been a relevant transaction, but
    - (ii) more tax would have been payable in respect of the transaction.
- 19 Where relief is partially withdrawn, tax is chargeable on the transaction as if the event had occurred immediately before the effective date of the transaction.
- 20 In that case, the tax so chargeable must be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

#### *Relevant period*

- 21 “The relevant period” means the shorter of—
- (a) the period of 3 years beginning with the effective date of the transaction, and
  - (b) the period beginning with the effective date of the transaction and ending with the date on which the buyer disposes of the dwelling, or the dwellings, to a person who is not connected with the buyer.
- 22 In relation to a transaction effected on completion of a contract that was substantially performed before completion, paragraph 21 applies as if references to the effective date of the transaction were to the date on which the contract was substantially performed.

#### *Interpretation*

- 23 In this Part of this schedule, “event” includes any change of circumstance or change of plan.

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## PART 6

### WHAT COUNTS AS A DWELLING

- 24 This Part of this schedule sets out rules for determining what counts as a dwelling for the purposes of this schedule.
- 25 A building or part of a building counts as a dwelling if—
- (a) it is used or suitable for use as a single dwelling, or
  - (b) it is in the process of being constructed or adapted for such use.
- 26 Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.
- 27 Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.
- 28 The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
  - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
  - (c) construction or adaptation of the building, or the part of a building, has not begun by the time the contract is substantially performed.
- 29 In paragraph 28, “relevant deeming provision” means section 10 or 11.
- 30 Subsections (3) to (6) of section 59 apply for the purposes of this Part of this schedule as they apply for the purposes of subsection (1)(a) of that section.

## SCHEDULE 6

*(introduced by section 27)*

### RELIEF FOR CERTAIN ACQUISITIONS BY REGISTERED SOCIAL LANDLORDS

#### *The relief*

- 1 A land transaction under which the buyer is a registered social landlord is exempt from charge if the qualifying conditions are met.

#### *The qualifying conditions*

- 2 The qualifying conditions are—
- (a) that the registered social landlord is controlled by its tenants,
  - (b) that the seller is one of the following—
    - (i) a registered social landlord,
    - (ii) the Scottish Ministers,
    - (iii) a local authority, and
  - (c) that the transaction is funded with the assistance of a grant or other financial assistance—

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- (i) made or given by way of a distribution pursuant to section 25 of the National Lottery etc. Act 1993 (c.39) (application of money by distributing bodies), or
- (ii) under section 2 of the Housing (Scotland) Act 1988 (c.43) (general functions of the Scottish Ministers).

*Landlord controlled by tenants*

- 3 The reference in paragraph 2(a) to a registered social landlord controlled by its tenants is to a registered social landlord the majority of whose board members are tenants occupying properties owned or managed by it.
- 4 For the purposes of paragraph 3, “board member” is to be construed as follows—

Type of registered social landlord	Board member
Company	A director of the company
Body corporate whose affairs are managed by its members	A member
Body of trustees	A trustee
None of the above	A member of the committee of management or other body to which is entrusted the direction of the affairs of the registered social landlord

SCHEDULE 7

*(introduced by section 27)*

ALTERNATIVE PROPERTY FINANCE RELIEF

**PART 1**

INTRODUCTORY

*Overview*

- 1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative property finance arrangements.
- (2) It is arranged as follows—
  - Part 2 identifies the alternative property finance arrangements that are relieved,
  - Part 3 makes provision limiting the arrangements that can be relieved,
  - Part 4 provides for the circumstances in which the chargeable interest acquired by a financial institution under the arrangements is an exempt interest, and
  - Part 5 defines expressions used in this schedule.

## PART 2

### ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS RELIEVED

#### *Land sold to financial institution and leased to person*

- 2 Paragraphs 3 to 6 apply where arrangements are entered into between a person and a financial institution under which the institution—
- (a) purchases a major interest in land (“the first transaction”),
  - (b) grants to the person out of that interest a lease (if the interest acquired is the interest of the owner) or a sub-lease (if the interest acquired is the tenant’s right over or interest in a property subject to a lease) (“the second transaction”), and
  - (c) enters into an agreement under which the person has a right to require the institution to transfer the major interest purchased by the institution under the first transaction.
- 3 The first transaction is exempt from charge if the seller is—
- (a) the person, or
  - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 2 entered into between it and the person.
- 4 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).
- 5 A transfer to the person that results from the exercise of the right mentioned in paragraph 2(c) (“the third transaction”) is exempt from charge if—
- (a) the provisions of this Act relating to the first and second transactions are complied with, and
  - (b) at all times between the second and third transactions—
    - (i) the interest purchased under the first transaction is held by a financial institution, and
    - (ii) the lease or sub-lease granted under the second transaction is held by the person.
- 6 The agreement mentioned in paragraph 2(c) is not to be treated—
- (a) as substantially performed unless and until the third transaction is entered into (and accordingly section 14 does not apply), or
  - (b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).

#### *Land sold to financial institution and person in common*

- 7 Paragraphs 8 to 12 apply where arrangements are entered into between a person and a financial institution under which—
- (a) the institution and the person purchase a major interest in land as common owners (“the first transaction”),
  - (b) the institution and the person enter into an agreement under which the person has a right to occupy the land exclusively (“the second transaction”), and
  - (c) the institution and the person enter into an agreement under which the person has a right to require the institution to transfer to the person (in one

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- transaction or a series of transactions) the whole interest purchased under the first transaction.
- 8 The first transaction is exempt from charge if the seller is—
- (a) the person, or
  - (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 7 entered into between it and the person.
- 9 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).
- 10 Any transfer to the person that results from the exercise of the right mentioned in paragraph 7(c) (“a further transaction”) is exempt from charge if—
- (a) the provisions of this Act relating to the first transaction are complied with, and
  - (b) at all times between the first and the further transaction—
    - (i) the interest purchased under the first transaction is held by a financial institution and the person as common owners, and
    - (ii) the land is occupied by the person under the agreement mentioned in paragraph 7(b).
- 11 The agreement mentioned in paragraph 7(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 14 does not apply), or
  - (b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).
- 12 A further transaction that is exempt from charge by virtue of paragraph 10 is not a notifiable transaction unless the transaction involves the transfer to the person of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.

*Land sold to financial institution and re-sold to person*

- 13 Paragraphs 14 and 15 apply where arrangements are entered into between a person and a financial institution under which—
- (a) the institution—
    - (i) purchases a major interest in land (“the first transaction”), and
    - (ii) sells that interest to the person (“the second transaction”), and
  - (b) the person grants the institution a standard security over that interest.
- 14 The first transaction is exempt from charge if the seller is—
- (a) the person, or
  - (b) another financial institution by whom the interest was acquired under other arrangements of the kind mentioned in paragraph 2 or 7 entered into between it and the person.
- 15 The second transaction is exempt from charge if the financial institution complies with the provisions of this Act relating to the first transaction (including the payment of any tax chargeable on a chargeable consideration that is not less than the market value of the interest and, in the case of the grant of a lease, the rent).

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### PART 3

#### ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS NOT RELIEVED

##### *No relief where first transaction already relieved*

- 16 Paragraphs 2 to 12 do not apply to arrangements in relation to which group relief, reconstruction relief or acquisition relief—
- (a) is available for the first transaction, or
  - (b) has been withdrawn from that transaction.

##### *No relief where arrangements to transfer control of financial institution*

- 17 Paragraphs 2 to 12 do not apply to alternative finance arrangements if those arrangements, or any connected arrangements, include arrangements for a person to acquire control of the relevant financial institution.
- 18 That includes arrangements for a person to acquire control of the relevant financial institution only if one or more conditions are met (such as the happening of an event or doing of an act).
- 19 In paragraphs 17 and 18—
- “alternative finance arrangements” means the arrangements referred to in paragraphs 2 and 7,
  - “connected arrangements” means any arrangements entered into in connection with the making of the alternative finance arrangements (including arrangements involving one or more persons who are parties to the alternative finance arrangements),
  - “relevant financial institution” means the financial institution which enters into the alternative finance arrangements.
- 20 Section 1124 of the Corporation Tax Act 2010 (c.4) applies for determining who has control of the relevant financial institution.

### PART 4

#### EXEMPT INTEREST

##### *Interest held by financial institution an exempt interest*

- 21 An interest held by a financial institution as a result of the first transaction within the meaning of paragraph 2(a) or 7(a) is an exempt interest for the purposes of the tax.
- 22 That interest ceases to be an exempt interest if—
- (a) the lease or agreement mentioned in paragraph 2(b) or 7(b) ceases to have effect, or
  - (b) the right under paragraph 2(c) or 7(c) ceases to have effect or becomes subject to a restriction.
- 23 Paragraph 21 does not apply if the first transaction is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs).
- 24 Paragraph 21 does not make an interest exempt in respect of—

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- (a) the first transaction itself, or
- (b) a third transaction or a further transaction within the meaning of paragraph 5 or 10.

## PART 5

### INTERPRETATION

#### *Interpretation*

- 25 (1) In this schedule “financial institution” has the meaning given by section 564B of the Income Tax Act 2007 (c.3).
- (2) For this purpose section 564B(1) applies as if paragraph (d) were omitted.
- 26 In this schedule—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
- references to a person are to be read, in relation to times after the death of the person concerned, as references to the person’s personal representatives.

## SCHEDULE 8

*(introduced by section 27)*

### RELIEF FOR ALTERNATIVE FINANCE INVESTMENT BONDS

## PART 1

### OVERVIEW AND INTERPRETATION

#### *Overview of relief*

- 1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative finance investment bonds.
- (2) It is arranged as follows—
- Part 2 provides that certain events relating to a bond are not to be treated as chargeable transactions (except in certain cases),
- Part 3 sets out general conditions for the operation of the reliefs in Part 4,
- Part 4 provides for relief in the case of certain transactions (and withdrawal of that relief),
- Part 5 makes provision about supplementary matters including when the reliefs in Part 4 are not available.

#### *Meaning of “alternative finance investment bond”*

- 2 In this schedule, “alternative finance investment bond” means arrangements to which section 564G of the Income Tax Act 2007 (c.3) (investment bond arrangements) applies.

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### *Interpretation*

- 3 In this schedule—
- “bond assets”, “bond-holder”, “bond-issuer” and “capital” have the meaning given by section 564G of the Income Tax Act 2007 (c.3),
  - “prescribed” means prescribed in regulations made by the Scottish Ministers,
  - “qualifying interest” means a major interest in land other than a lease for a period of 21 years or less.

## **PART 2**

### ISSUE, TRANSFER AND REDEMPTION OF RIGHTS UNDER BOND NOT TO BE TREATED AS CHARGEABLE TRANSACTION

### *The relief*

- 4 For the purposes of this Act—
- (a) the bond-holder under an alternative finance investment bond is not treated as having an interest in the bond assets,
  - (b) the bond-issuer under such a bond is not treated as a trustee of the bond assets.

### *Relief not available where bond-holder acquires control of underlying asset*

- 5 (1) Paragraph 4 does not apply if control of the underlying asset is acquired by—
- (a) a bond-holder, or
  - (b) a group of connected bond-holders.
- (2) A bond-holder (BH), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
  - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
- 6 (1) But paragraph 5(1) does not apply (and accordingly, section 564S of the Income Tax Act 2007 applies by virtue of paragraph 4) in either of the following cases.
- (2) The first case is where—
- (a) at the time that the rights were acquired BH (or all the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
  - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that exercise no longer to be possible.
- (3) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and
  - (b) does not exercise the right of management and control of the bond assets.



- (4) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

### PART 3

#### GENERAL CONDITIONS FOR OPERATION OF RELIEFS ETC.

##### *Introduction*

- 7 This Part of this schedule defines conditions A to G for the purposes of paragraphs 15 to 21.

##### *Condition A*

- 8 Condition A is that one person (P) and another (Q) enter into arrangements under which—
- (a) P transfers to Q a qualifying interest in land (“the first transaction”), and
  - (b) P and Q agree that when the interest ceases to be held by Q as mentioned in paragraph 9(b), Q will transfer the interest to P.

##### *Condition B*

- 9 Condition B is that—
- (a) Q, as bond-issuer, enters into an alternative finance investment bond (whether before or after entering into the arrangements mentioned in paragraph 8), and
  - (b) the interest in land to which those arrangements relate is held by Q as a bond asset.

##### *Condition C*

- 10 (1) Condition C is that, for the purpose of generating income or gains for the alternative finance investment bond—
- (a) Q and P enter into a leaseback agreement, or
  - (b) such other condition or conditions as may be specified in regulations made by the Scottish Ministers is or are met.
- (2) For the purposes of condition C, Q and P enter into a leaseback agreement if Q grants to P, out of the interest transferred to Q—
- (a) a lease (if the interest transferred is the interest of the owner), or
  - (b) a sub-lease (if the interest transferred is the tenant’s right over or interest in land subject to a lease).

##### *Condition D*

- 11 (1) Condition D is that, before the end of the period of 120 days beginning with the effective date of the first transaction, Q provides the Tax Authority with the prescribed evidence that a satisfactory standard security has been registered in the Land Register of Scotland.

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- (2) A security is satisfactory for the purposes of condition D if it—
- (a) is a security ranking first granted over the interest transferred to Q,
  - (b) is in favour of the Tax Authority, and
  - (c) is for the amount mentioned in sub-paragraph (3).
- (3) That amount is the total of—
- (a) the amount of the tax which would (apart from paragraph 15) be chargeable on the first transaction if the chargeable consideration for that transaction had been the market value of the interest at that time, and
  - (b) any interest and any penalties which would for the time being be payable on or in respect of that amount of tax, if the tax had been due and payable (but not paid) in respect of the first transaction.

*Condition E*

- 12 Condition E is that the total of the payments of capital made to Q before the termination of the bond is not less than 60% of the value of the interest in the land at the time of the first transaction.

*Condition F*

- 13 Condition F is that Q holds the interest in land as a bond asset until the termination of the bond.

*Condition G*

- 14 (1) Condition G is that—
- (a) before the end of the period of 30 days beginning with the date on which the interest in the land ceases to be held as a bond asset, that interest is transferred by Q to P (“the second transaction”), and
  - (b) the second transaction is effected not more than 10 years after the first transaction.
- (2) The Scottish Ministers may by regulations amend sub-paragraph (1)(b) by substituting for the period mentioned there such other period as may be specified.

## **PART 4**

### **RELIEF FOR CERTAIN TRANSACTIONS**

*The relief: first transaction*

- 15 (1) The first transaction is exempt from charge if—
- (a) it relates to an interest in land in Scotland, and
  - (b) each of the conditions A to C is met before the end of the period of 30 days beginning with the effective date of the transaction.
- (2) This paragraph is subject to—
- (a) paragraphs 21 and 22 (where the interest in land is replaced as the bond asset by an interest in other land),

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- (b) paragraph 24.

*Withdrawal of relief*

- 16 (1) Relief under paragraph 15 is withdrawn if—
- (a) the interest in the land is transferred by Q to P without conditions E and F having been met,
  - (b) the period mentioned in paragraph 14(1)(b) expires without each of those conditions having been met, or
  - (c) at any time it becomes apparent for any other reason that any of the conditions E to G cannot or will not be met.
- (2) The relief is also withdrawn if condition D is not met.

*Amount of tax chargeable where relief withdrawn*

- 17 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 18.
- 18 The amount chargeable is the tax that would have been chargeable in respect of the first transaction (but for the relief under paragraph 15) if the chargeable consideration for that transaction had been an amount equal to—
- (a) the market value of the subject-matter of the transaction, or
  - (b) if the acquisition was the grant of a lease, the rent.

*Relief from land and buildings transaction tax: second transaction*

- 19 (1) The second transaction is exempt from charge if—
- (a) each of conditions A to G is met, and
  - (b) the provisions of this Act in relation to the first transaction are complied with.
- (2) This paragraph is subject to—
- (a) paragraphs 21 and 22 (where the interest in land is replaced as the bond asset by an interest in other land),
  - (b) paragraph 24.

*Discharge of security when conditions for relief met*

- 20 If, after the effective date of the second transaction, Q provides the Tax Authority with the prescribed evidence that each of conditions A to C and E to G has been met, the land ceases to be subject to the security registered in pursuance of condition D.

**PART 5**

SUPPLEMENTARY

*Substitution of asset*

- 21 (1) This paragraphs applies if—
- (a) conditions A to C and G are met in relation to an interest in land (“the original land”),

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- (b) Q ceases to hold the original land as a bond asset (and, accordingly, transfers it to P) before the termination of the alternative finance investment bond,
  - (c) P and Q enter into further arrangements falling within paragraph 8 relating to an interest in other land (“the replacement land”), and
  - (d) the value of the interest in the replacement land at the time that it is transferred from P to Q is greater than or equal to the value of the interest in the original land at the time of the first transaction.
- (2) Paragraphs 15 to 20 apply—
- (a) in relation to the original land with the modification set out in sub-paragraph (3), and
  - (b) in relation to the replacement land with the modifications set out in sub-paragraph (4).
- (3) Condition F does not need to be met in relation to the original land if conditions A, B, C, F and G (as modified by sub-paragraph (4)) are met in relation to the replacement land.
- (4) In relation to the replacement land—
- (a) condition E applies as if the reference to the interest in the land were a reference to the interest in the original land, and
  - (b) condition G applies as if the reference in paragraph 14(1)(b) to the first transaction were a reference to the first transaction relating to the original land.
- (5) If the replacement land is in Scotland, the original land ceases to be subject to the security registered in pursuance of condition D when—
- (a) Q provides the Tax Authority with the prescribed evidence that condition G is met in relation to the original land, and
  - (b) condition D is met in relation to the replacement land.
- (6) If the replacement land is not in Scotland, the original land ceases to be subject to the security registered in pursuance of condition D when Q provides the Tax Authority with the prescribed evidence that—
- (a) condition G is met in relation to the original land, and
  - (b) each of conditions A to C is met in relation to the replacement land.
- 22 (1) Paragraph 21 also applies where the replacement land is replaced by further replacement land.
- (2) In that event—
- (a) the references to the original land (except those in paragraph 21(4)) are to be read as references to the replacement land, and
  - (b) the references to the replacement land are to be read as references to the further replacement land.

*Tax Authority to register discharge of security*

- 23 (1) Where a security is discharged in accordance with paragraph 20 or 21(5) or (6), the Tax Authority must register the discharge in the Land Register of Scotland.
- (2) The Tax Authority must do so within the period of 30 days beginning with the date on which Q provides the evidence in question.

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

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*Relief not available where bond-holder acquires control of underlying asset*

- 24 (1) The reliefs provided by paragraphs 15 and 19 (and paragraph 21 so far as it relates to those paragraphs) are not available if control of the underlying asset is acquired by—
- (a) a bond-holder, or
  - (b) a group of connected bond-holders.
- (2) A bond-holder (BH), or a group of connected bond-holders, acquires control of the underlying asset if—
- (a) the rights of bond-holders under an alternative finance investment bond include the right of management and control of the bond assets, and
  - (b) BH, or the group, acquires sufficient rights to enable BH, or the members of the group acting jointly, to exercise the right of management and control of the bond assets to the exclusion of any other bond-holders.
- (3) In accordance with sub-paragraph (1), in the case of relief provided by paragraph 15—
- (a) if BH, or the group, acquires control of the underlying asset before the end of the period of 30 days beginning with the effective date of the first transaction, paragraph 15 does not apply, and
  - (b) if BH, or the group, acquires control of the underlying asset after the end of that period and conditions A to C have been met, the relief is treated as withdrawn under paragraph 16.
- 25 (1) But paragraph 24 does not prevent the reliefs being available in either of the following cases.
- (2) The first case is where—
- (a) at the time that the rights were acquired BH (or all of the connected bond-holders) did not know and had no reason to suspect that the acquisition enabled the exercise of the right of management and control of the bond assets to the exclusion of other bond-holders, and
  - (b) as soon as reasonably practicable after BH (or any of the bond-holders) becomes aware that the acquisition enables that exercise, BH transfers (or some or all of the bond-holders transfer) sufficient rights for that no longer to be possible.
- (3) The second case is where BH—
- (a) underwrites a public offer of rights under the bond, and
  - (b) does not exercise the right of management and control of the bond assets.
- (4) In this paragraph, “underwrite”, in relation to an offer of rights under a bond, means to agree to make payments of capital under the bond in the event that other persons do not make those payments.

*Relief not available if purpose of arrangements is improper*

- 26 The reliefs provided by paragraph 15 and 19 (and paragraph 21 so far as it relates to those paragraphs) are not available if the arrangements mentioned in paragraph 8—
- (a) are not effected for genuine commercial reasons, or
  - (b) form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to the tax.

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

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## SCHEDULE 9

*(introduced by section 27)*

### CROFTING COMMUNITY RIGHT TO BUY RELIEF

#### *The relief*

- 1 This schedule applies where—
  - (a) a chargeable transaction is entered into in pursuance of the crofting community right to buy, and
  - (b) under that transaction two or more crofts are being bought.
- 2 The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.
- 3 The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

#### *Interpretation*

- 4 In this schedule “crofting community right to buy” means the right exercisable by a crofting community body under Part 3 of the Land Reform (Scotland) Act [2003 \(asp 2\)](#).

## SCHEDULE 10

*(introduced by section 27)*

### GROUP RELIEF

#### **PART 1**

##### INTRODUCTORY

#### *Overview*

- 1 (1) This schedule provides for relief for certain transactions involving companies.
- (2) It is arranged as follows—
  - Part 2 provides for when relief is available,
  - Part 3 provides for when the relief is withdrawn,
  - Part 4 defines expressions used in this schedule.

#### **PART 2**

##### THE RELIEF

#### *The relief*

- 2 A land transaction is exempt from charge if the seller and buyer are companies that at the effective date of the transaction are members of the same group.

### *Restrictions on availability of relief*

- 3 Relief under this schedule is not available if at the effective date of the transaction there are arrangements in existence by virtue of which, at that or some later time, a person has or could obtain, or any persons together have or could obtain, control of the buyer but not of the seller.
- 4 Paragraph 3 does not apply to arrangements to which paragraph 9 or 10 applies.
- 5 Relief under this schedule is not available if the transaction is effected in pursuance of, or in connection with, arrangements under which—
- (a) the consideration, or any part of the consideration, for the transaction is to be provided or received (directly or indirectly) by a person other than a group company, or
  - (b) the seller and the buyer are to cease to be members of the same group by reason of the buyer ceasing to be a 75% subsidiary of the seller or a third company.
- 6 Arrangements are within paragraph 5(a) if under them the seller or the buyer, or another group company, is to be enabled to provide any of the consideration, or is to part with any of it, by or in consequence of the carrying out of a transaction or transactions involving, or any of them involving, a payment or other disposition by a person other than a group company.
- 7 Paragraph 5(b) does not apply to arrangements to which paragraph 10 applies.
- 8 Relief under this schedule is not available if the transaction—
- (a) is not effected for bona fide commercial reasons, or
  - (b) forms part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

### *Arrangements that do not restrict availability of relief*

- 9 This paragraph applies to arrangements entered into with a view to an acquisition of shares by a company (“the acquiring company”)—
- (a) in relation to which section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) will apply,
  - (b) in relation to which the conditions for relief under that section will be met, and
  - (c) as a result of which the buyer will be a member of the same group as the acquiring company.
- 10 This paragraph applies to arrangements in so far as they are for the purpose of facilitating a transfer of the whole or part of the business of a company to another company in relation to which—
- (a) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) is intended to apply, and
  - (b) the conditions for relief under that section are intended to be met.

### *Interpretation*

- 11 In this Part of this schedule—  
“control” has the meaning given by section 1124 of the Corporation Tax Act 2010 (c.4),

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“group company” means a company that at the effective date of the transaction is a member of the same group as the seller and the buyer.

### PART 3

#### WITHDRAWAL OF RELIEF

##### *Overview*

- 12 This Part of this schedule is arranged as follows—
- paragraphs 13 to 19 provide for circumstances where relief under this schedule is withdrawn,
  - paragraphs 20 to 31 provide for circumstances in which, despite paragraphs 13 to 19, relief is not withdrawn, and
  - paragraphs 32 to 40 provide for the application of paragraphs 13 to 31 where there are successive transactions.

##### *Withdrawal of relief*

- 13 Relief under this schedule is withdrawn or partially withdrawn where paragraphs 14 and 15 apply.
- 14 This paragraph applies where the buyer in the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”) ceases to be a member of the same group as the seller—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction, or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- 15 This paragraph applies where, at the time the buyer ceases to be a member of the same group as the seller (“the relevant time”), it or a relevant associated company holds a chargeable interest—
- (a) that was acquired by the buyer under the relevant transaction, or
  - (b) that is derived from a chargeable interest so acquired,
- and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

##### *Amount of tax chargeable where relief withdrawn*

- 16 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 17.
- 17 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—
- (a) the market value of the subject-matter of the transaction, or
  - (b) if the acquisition was the grant of a lease, the rent.



*Amount of tax chargeable where relief partially withdrawn*

- 18 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 17.
- 19 An “appropriate proportion” means an appropriate proportion having regard to—
- (a) the subject-matter of the relevant transaction, and
  - (b) what is held at the relevant time by the buyer or, as the case may be, by the buyer and its relevant associated companies.

*Case where relief not withdrawn: winding up*

- 20 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller by reason of anything done for the purposes of, or in the course of, winding up the seller or another company that is above the seller in the group structure.

*Cases where relief not withdrawn: stamp duty reliefs*

- 21 Relief under this schedule is not withdrawn where—
- (a) the buyer ceases to be a member of the same group as the seller as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—
    - (i) section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) applies, and
    - (ii) the conditions for relief under that section are met, and
  - (b) the buyer is immediately after that acquisition a member of the same group as the acquiring company.
- 22 Relief under this schedule is not withdrawn where—
- (a) the buyer ceases to be a member of the same group as the seller as a result of the transfer of the whole or part of the seller’s business to another company (“the acquiring company”) in relation to which—
    - (i) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) applies, and
    - (ii) the conditions for relief under that section are met, and
  - (b) the buyer is immediately after that transfer a member of the same group as the acquiring company.
- 23 But where, in a case to which paragraph 21 or 22 applies—
- (a) the buyer ceases to be a member of the same group as the acquiring company in the circumstances mentioned in paragraph 24, and
  - (b) at the time the buyer ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest to which paragraph 25 applies,
- this schedule applies as if the buyer had then ceased to be a member of the same group as the seller.
- 24 The circumstances referred to in paragraph 23(a) are that the buyer ceases to be a member of the same group as the acquiring company—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

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- (b) in pursuance of, or in connection with, arrangements made before the end of that period.

25 This paragraph applies to a chargeable interest—

- (a) that was acquired by the buyer under the relevant transaction, or
- (b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

*Case where relief not withdrawn: seller leaves group*

26 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller because the seller leaves the group.

27 The seller is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—

- (a) the seller, or
- (b) another company that is above the seller in the group structure and as a result of the transaction ceases to be a member of the same group as the buyer.

28 But if there is a change in the control of the buyer after the seller leaves the group, paragraphs 13 to 19 and 22 to 25 have effect as if the buyer had then ceased to be a member of the same group as the seller.

29 Paragraph 28 does not apply where—

- (a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and
- (b) the other persons who controlled the buyer before the change continue to do so.

30 There is a change in the control of the buyer if—

- (a) a person who controls the buyer (alone or with others) ceases to do so,
- (b) a person obtains control of the buyer (alone or with others), or
- (c) the buyer is wound up.

31 For the purposes of paragraph 30 a person does not control, or obtain control of, the buyer if that person is under the control of another person or other persons.

*Withdrawal of relief in certain cases involving successive transactions*

32 Where the following conditions are met, paragraphs 13 to 31 have effect in relation to the relevant transaction as if the seller in relation to the earliest previous transaction falling within paragraph 37 were the seller in relation to the relevant transaction.

33 The first condition is that there is a change in control of the buyer.

34 The second condition is that the change occurs—

- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or
- (b) in pursuance of, or in connection with, arrangements made before the end of that period.

- 35 The third condition is that, apart from paragraph 32, relief under this schedule in relation to the relevant transaction would not be withdrawn under paragraph 13.
- 36 The fourth condition is that any previous transaction falls within paragraph 37.
- 37 A previous transaction falls within this paragraph if—
- (a) the previous transaction is exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief),
  - (b) the effective date of the previous transaction is less than 3 years before the date of the change mentioned in the first condition,
  - (c) the chargeable interest acquired under the relevant transaction by the buyer in relation to that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the buyer in relation to the previous transaction, and
  - (d) since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person under a transaction that is not exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief).
- 38 Paragraph 33 does not apply where—
- (a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and
  - (b) the other persons who controlled the buyer before the change continue to do so.
- 39 If two or more transactions effected at the same time are the earliest previous transactions falling within paragraph 37, the reference in paragraph 32 to the seller in relation to the earliest previous transaction is a reference to the persons who are the sellers in relation to the earliest previous transactions.
- 40 There is a change in the control of a company if—
- (a) a person who controls the company (alone or with others) ceases to do so,
  - (b) a person obtains control of the company (alone or with others), or
  - (c) the company is wound up.

### *Interpretation*

- 41 For the purposes of paragraphs 20 and 27 a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.
- 42 In this Part of this schedule—
- “control” is to be interpreted in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4) (but see paragraph 31),
  - “relevant associated company”, in relation to the buyer, means a company that—
    - (a) is a member of the same group as the buyer immediately before the buyer ceases to be a member of the same group as the seller, and
    - (b) ceases to be a member of the same group as the seller in consequence of the buyer so ceasing.

## PART 4

### INTERPRETATION

#### *When are companies members of the same group?*

- 43 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

#### *When is a company a subsidiary of another company?*

- 44 A company (A) is the 75% subsidiary of another company (B) if B—
- (a) is beneficial owner of not less than 75% of the ordinary share capital of A,
  - (b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and
  - (c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.
- 45 For the purposes of paragraph 44(a)—
- (a) the ownership referred to is ownership either directly or through another company or companies,
  - (b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).
- 46 “Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- 47 Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 44(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.
- 48 But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 44(b) and (c).

#### *Other definitions*

- 49 In this schedule—
- “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable,
  - “company” means a body corporate.

## SCHEDULE 11

(introduced by section 27)

### RECONSTRUCTION RELIEF AND ACQUISITION RELIEF

#### PART 1

##### INTRODUCTORY

###### *Overview*

- 1 (1) This schedule provides for relief for certain transactions in connection with the reconstruction and acquisition of companies.
- (2) It is arranged as follows—
  - Part 2 provides for when reconstruction relief is available,
  - Part 3 provides for when acquisition relief is available,
  - Part 4 provides for when the relief is withdrawn,
  - Part 5 defines expressions used in this schedule.

#### PART 2

##### RECONSTRUCTION RELIEF

###### *The relief*

- 2 A land transaction is exempt from charge if—
  - (a) it is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and
  - (b) the qualifying conditions are met.

###### *Qualifying conditions*

- 3 The qualifying conditions are—
  - (a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company,
  - (b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all shareholders of the target company,
  - (c) that after the acquisition has been made—
    - (i) each shareholder of each of the companies is a shareholder of the other, and
    - (ii) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder,
  - (d) that the acquisition—
    - (i) is effected for bona fide commercial reasons, and

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(ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

4 Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in the qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.

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

### PART 3

#### ACQUISITION RELIEF

##### *The relief*

- 6 (1) This paragraph applies where—
- (a) a land transaction is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and
  - (b) the qualifying conditions are met.
- (2) The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.
- (3) The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

##### *Qualifying conditions*

- 7 The qualifying conditions are—
- (a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”),
  - (b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—
    - (i) the target company, or
    - (ii) all or any of the target company’s shareholders,
  - (c) that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part,
  - (d) that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests,
  - (e) that the acquisition—
    - (i) is effected for bona fide commercial reasons, and
    - (ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

- 8 Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of—
- (a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,
  - (b) the assumption or discharge by the acquiring company of liabilities of the target company, or
  - (c) both of those things.

#### *Interpretation*

- 9 For the purposes of qualifying condition (c)—
- (a) companies are associated if one has control of the other or both are controlled by the same person or person,
  - (b) “control” is to be construed in accordance with section 1124 of the Corporation Tax Act 2010 (c.4).
- 10 In this Part of this schedule, “trade” includes any venture in the nature of trade.

## **PART 4**

### WITHDRAWAL OF RELIEF

#### *Overview*

- 11 This Part of this schedule is arranged as follows—
- paragraphs 12 to 14 provide for circumstances in which relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,
  - paragraphs 15 to 21 provide for circumstances in which, despite paragraphs 12 to 14, relief is not withdrawn,
  - paragraphs 22 to 28 provide for the withdrawal of relief, which would otherwise not be withdrawn by virtue of paragraph 17 or 19, on the occurrence of certain subsequent events,
  - paragraphs 29 to 32 provide for how the tax chargeable is determined where relief is withdrawn or partially withdrawn.

#### *Withdrawal of relief*

- 12 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn where paragraphs 13 and 14 apply.
- 13 This paragraph applies where control of the acquiring company changes—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.

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- 14 This paragraph applies where, at the time the control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—
- (a) that was acquired by the acquiring company under the relevant transaction, or
  - (b) that is derived from a chargeable interest so acquired,
- and that has not subsequently been acquired at market value under a chargeable transaction in relation to which relief under this schedule was available but was not claimed.

*Case where relief not withdrawn: change of control of acquiring company as result of transaction connected to divorce etc.*

- 15 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—
- (a) any of paragraphs (a) to (d) of paragraph 4 of schedule 1 (transactions connected with divorce etc.), or
  - (b) any of paragraphs (a) to (d) of paragraph 5 of schedule 1 (transactions connected with dissolution of civil partnership etc.).
- 16 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that—
- (a) is effected as mentioned in paragraph 7(1) of schedule 1, and
  - (b) meets the conditions in paragraph 7(2) of that schedule (variation of testamentary dispositions etc.).

*Case where relief not withdrawn: exempt intra-group transfer*

- 17 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of an exempt intra-group transfer.
- 18 But see paragraphs 22 to 24 for the effect of a subsequent non-exempt transfer.

*Case where relief not withdrawn: share acquisition relief*

- 19 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies.
- 20 But see paragraphs 25 to 28 for the effect of a change in the control of that other company.

*Case where relief not withdrawn: controlling loan creditor*

- 21 Relief under Part 2 or Part 3 of this schedule is not withdrawn where—
- (a) control of the acquiring company changes as a result of a loan creditor (within the meaning of section 453 of the Corporation Tax Act 2010 (c.4)) becoming, or ceasing to be, treated as having control of the company, and
  - (b) the other persons who were previously treated as controlling the company continue to be so treated.



*Withdrawal of relief on subsequent non-exempt transfer*

- 22 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—
- (a) control of the acquiring company changes as a result of an exempt intra-group transfer, and
  - (b) paragraphs 23 and 24 apply.
- 23 This paragraph applies where a company holding shares in the acquiring company to which the exempt intra-group transfer related, or that are derived from shares to which that transfer related, ceases to be a member of the same group as the target company—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- 24 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
- (a) that was transferred to the acquiring company by the relevant transaction, or
  - (b) that is derived from an interest so transferred,
- and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

*Withdrawal of relief where share acquisition relief applied but control of company subsequently changes*

- 25 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—
- (a) control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies, and
  - (b) paragraphs 26 to 28 apply.
- 26 This paragraph applies where control of the other company mentioned in paragraph 25(a) changes—
- (a) before the end of the period of 3 years beginning with the effective date of the relevant transaction, or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- 27 This paragraph applies where, at the time control of that other company changes, it holds shares transferred to it by the transfer mentioned in paragraph 25(a), or any shares derived from shares so transferred.
- 28 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
- (a) that was transferred to the acquiring company by the relevant transaction, or
  - (b) that is derived from an interest so transferred,
- and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

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*Amount of tax chargeable where relief withdrawn*

- 29 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 30.
- 30 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the relief if the chargeable consideration for that transaction had been an amount equal to—
- (a) the market value of the subject-matter of the transaction,
  - (b) if the acquisition was the grant of a lease, the rent.

*Amount of tax chargeable where relief partially withdrawn*

- 31 Where relief is partially withdrawn, the tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 30.
- 32 An “appropriate proportion” means an appropriate proportion having regard to—
- (a) the subject-matter of the relevant transaction, and
  - (b) what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.

*Interpretation*

- 33 In paragraphs 19 and 25—
- (a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c.41), and
  - (b) a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.
- 34 In this Part of this schedule, references to control of a company changing are to the company becoming controlled—
- (a) by a different person,
  - (b) by a different number of persons, or
  - (c) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.
- 35 In this Part of this schedule—
- “control” is to be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4),
- “exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the Finance Act 1930 (c.28) or section 11 of the Finance Act (Northern Ireland) 1954 (c.23 (NI)) (transfers between associated bodies corporate),
- “relevant associated company”, in relation to the acquiring company, means a company—
- (a) that is controlled by the acquiring company immediately before the control of that company changes, and
  - (b) of which control changes in consequence of the change of control of that company.

## PART 5

### INTERPRETATION

#### *When are companies members of the same group?*

- 36 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

#### *When is a company a subsidiary of another company?*

- 37 A company (A) is the 75% subsidiary of another company (B) if B—
- (a) is beneficial owner of not less than 75% of the ordinary share capital of A,
  - (b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and
  - (c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.
- 38 For the purposes of paragraph 37—
- (a) the ownership referred to in that paragraph is ownership either directly or through another company or companies, and
  - (b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).
- 39 “Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- 40 Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 37(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.
- 41 But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 37(b) and (c).

#### *Other definitions*

- 42 In this schedule—
- “arrangements” include any scheme, agreement or understanding, whether or not legally enforceable,
  - “non-redeemable shares” means shares that are not redeemable shares.

## SCHEDULE 12

*(introduced by section 27)*

### RELIEF FOR INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

#### *The relief*

- 1 A land transaction by which a chargeable interest is transferred by a person (“the transferor”) to a limited liability partnership in connection with its incorporation is exempt from charge if the qualifying conditions are met.

#### *The qualifying conditions*

- 2 The qualifying conditions are—
- (a) that the effective date of the transaction is not more than 1 year after the date of incorporation of the limited liability partnership,
  - (b) that at the relevant time the transferor—
    - (i) is a partner in a partnership, or
    - (ii) holds the interest transferred as nominee or bare trustee for one or more partners in a partnership,
  - (c) that at the relevant time the partnership mentioned in paragraph (b) is comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else), and
  - (d) that either—
    - (i) the proportions of the interest transferred to which the persons mentioned in paragraph (c) are entitled immediately after the transfer are the same as those to which they were entitled at the relevant time, or
    - (ii) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to the tax.

#### *Interpretation*

- 3 In this schedule—
- “limited liability partnership” means a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),
  - “the relevant time” means—
    - (a) where the transferor acquired the interest after the incorporation of the limited liability partnership, immediately after the transferor acquired it, and
    - (b) in any other case, immediately before the incorporation of the limited liability partnership.

SCHEDULE 13  
(introduced by section 27)  
CHARITIES RELIEF

*The relief*

- 1 A land transaction is exempt from charge if the buyer is a charity and the qualifying conditions are met.

*Qualifying conditions*

- 2 The qualifying conditions are—
- (a) that the buyer intends to hold—
    - (i) the subject-matter of the transaction, or
    - (ii) the greater part of that subject-matter,for qualifying charitable purposes, and
  - (b) that the transaction has not been entered into for the purpose of avoiding the tax (whether by the buyer or any other person).

*Qualifying charitable purposes*

- 3 A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it—
- (a) for use in the furtherance of the charitable purposes of the buyer or of another charity, or
  - (b) as an investment from which the profits are applied to the charitable purposes of the buyer.

*Withdrawal of relief*

- 4 Relief under this schedule is withdrawn, or partially withdrawn, if—
- (a) a disqualifying event occurs—
    - (i) before the end of the period of 3 years beginning with the effective date of the transaction which was exempt from charge under this schedule (“the relevant transaction”), or
    - (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and
  - (b) at the time of the disqualifying event the buyer holds a chargeable interest—
    - (i) that was acquired by the buyer under the relevant transaction, or
    - (ii) that is derived from an interest so acquired.
- 5 A “disqualifying event” means—
- (a) the buyer ceasing to be established for charitable purposes only, or
  - (b) the subject-matter of the relevant transaction, or any interest or right derived from it, being held or used by the buyer otherwise than for qualifying charitable purposes.
- 6 Where the relevant transaction is exempt from charge by virtue of qualifying condition (a)(ii), the following are also disqualifying events—
- (a) any transfer by the buyer of a major interest in the whole or any part of the subject-matter of the relevant transaction, or

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(b) any grant by the buyer at a premium of a low-rental lease of the whole or any part of that subject-matter,  
that is not made for the charitable purposes of the buyer.

7 A lease—

- (a) is granted “at a premium” if there is consideration other than rent, and
- (b) is a “low-rental” lease if the annual rent (if any) is less than £1,000 a year.

8 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the relevant transaction but for the relief.

9 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the tax that would have been chargeable but for the relief.

10 An “appropriate proportion” means an appropriate proportion having regard to—

- (a) what was acquired by the buyer under the relevant transaction and what is held by the buyer at the time of the disqualifying event, and
- (b) the extent to which what is held by the buyer at that time becomes used or held for purposes other than qualifying charitable purposes.

11 In relation to a transfer or grant that is, by virtue of paragraph 6, a disqualifying event—

- (a) the date of the event for the purposes of paragraph 4 is the effective date of the transfer or grant,
- (b) paragraph 4(b) has effect as if, for “at the time” there were substituted “immediately before”,
- (c) paragraph 10 has effect as if—
  - (i) in paragraph (a), for “at the time of” there were substituted “immediately before and immediately after”,
  - (ii) paragraph (b) were omitted.

### *Charitable trusts*

12 This schedule applies in relation to a charitable trust as it applies to a charity.

13 “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.

14 In this schedule as it applies in relation to a charitable trust—

- (a) references to the buyer in paragraph 3(a) and (b) are to the beneficiaries or unit holders, or any of them,
- (b) the reference to the buyer in paragraph 5(a) is to any of the beneficiaries or unit holders,
- (c) the reference in paragraph 6 to the charitable purposes of the buyer is to those of the beneficiaries or unit holders, or any of them.

### *Interpretation*

15 (1) In this schedule, “charity” means—

- (a) a body registered in the Scottish Charity Register, or
- (b) a body which is—
  - (i) established under the law of a relevant territory,

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- (ii) managed or controlled wholly or mainly outwith Scotland, and
- (iii) meets at least one of the conditions in sub-paragraph (2).

(2) The conditions are—

- (a) the body is registered in a register corresponding to the Scottish Charity Register,
- (b) the body's purposes consist only of one or more of the charitable purposes.

(3) A relevant territory is—

- (a) England and Wales,
- (b) Northern Ireland,
- (c) a member State of the European Union other than the United Kingdom, or
- (d) a territory specified in regulations made by the Scottish Ministers.

16 In this schedule, "charitable purposes" has the meaning given by section 106 of the Charities and Trustee Investments (Scotland) Act 2005 (asp 10).

17 In this schedule, "annual rent" means the average annual rent over the term of the lease or, if—

- (a) different amounts of rent are payable for different parts of the term, and
- (b) those amounts (or any of them) are ascertainable at the time of the disqualifying event,

the average annual rent over the period for which the highest ascertainable rent is payable.

## SCHEDULE 14

*(introduced by section 27)*

### RELIEF FOR CERTAIN COMPULSORY PURCHASES

#### *The relief*

1 An acquisition of a chargeable interest by a local authority is exempt from charge if the qualifying condition is met.

#### *Qualifying condition*

2 The qualifying condition is that the local authority has made a compulsory purchase order in respect of the chargeable interest for the purpose of facilitating the undertaking or achievement of an activity or purpose mentioned in section 189 of the Town and Country Planning (Scotland) Act 1997 (c.8) by another person.

#### *Interpretation*

3 For the purposes of this schedule it does not matter how the acquisition is effected (so this provision applies where the acquisition is effected by agreement).

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## SCHEDULE 15

*(introduced by section 27)*

### RELIEF FOR COMPLIANCE WITH PLANNING OBLIGATIONS

#### *The relief*

- 1 A land transaction that is entered into in order to comply with—
- (a) a planning obligation, or
  - (b) a modification of a planning obligation,
- is exempt from charge if the qualifying conditions are met.

#### *The qualifying conditions*

- 2 The qualifying conditions are—
- (a) that the planning obligation or modification is enforceable against the seller,
  - (b) that the buyer is a public body, and
  - (c) the effective date of the transaction is within the period of 5 years beginning with the date on which the planning obligation was entered into or modified.

#### *“Planning obligation” and “modification”*

- 3 “Planning obligation” means an agreement made under section 75 of the Town and Country Planning (Scotland) Act 1997 (c.8).
- 4 “Modification” of a planning obligation means modification as mentioned in sections 75A and 75B of that Act.

#### *Public authorities*

- 5 The following are public bodies for the purposes of paragraph 2(b)—
- a local authority,
  - the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),
  - a health board established under section 2(1)(a) of that Act,
  - Healthcare Improvement Scotland established under section 10A of that Act,
  - a special health board established under section 2(1)(b) of that Act,
  - any other body that is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8),
  - a person prescribed for the purposes of this paragraph by the Scottish Ministers by order.



## SCHEDULE 16

(introduced by section 27)

### PUBLIC BODIES RELIEF

#### *The relief*

- 1 A land transaction entered into on, in consequence of or in connection with a reorganisation effected by or under an enactment is exempt from charge if the buyer and seller are both public bodies.
- 2 The Scottish Ministers may, by order, provide that a land transaction that is not entered into as mentioned in paragraph 1 is exempt from charge if—
  - (a) the transaction is effected by or under an enactment specified in the order, and
  - (b) either the buyer or the seller is a public body.

#### *Meaning of “reorganisation”*

- 3 A “reorganisation” means changes involving—
  - (a) the establishment, reform or abolition of one or more public bodies,
  - (b) the creation, alteration or abolition of functions to be discharged or discharged by one or more public bodies, or
  - (c) the transfer of functions from one public body to another.

#### *Public bodies*

- 4 The following are public bodies for the purposes of this schedule—
  - the Scottish Ministers,
  - a Minister of the Crown,
  - the Scottish Parliamentary Corporate Body,
  - a local authority,
  - the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),
  - a health board established under section 2(1)(a) of that Act,
  - Healthcare Improvement Scotland established under section 10A of that Act,
  - a special health board established under section 2(1)(b) of that Act,
  - any other authority that is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8),
  - a body (other than a company) that is established by or under an enactment for the purpose of carrying out functions conferred on it by or under an enactment,
  - a person prescribed for the purposes of this paragraph by the Scottish Ministers by order.
- 5 In this schedule, references to a public body include—
  - (a) a company in which all the shares are owned by such a body, and
  - (b) a wholly-owned subsidiary of such a company.
- 6 In paragraphs 4 and 5, “company” means a company as defined by section 1 of the Companies Act 2006.

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**SCHEDULE 17**  
(introduced by section 49)

**PARTNERSHIPS**

**PART 1**

OVERVIEW

*Overview*

- 1 (1) This schedule makes provision about the application of this Act in relation to partnerships.
- (2) It is arranged as follows—
- Part 2 makes general provision about the treatment of partnerships,
  - Part 3 makes provision about ordinary transactions involving a partnership,
  - Part 4 makes provision about transactions involving transfers from a partner or certain other persons to a partnership,
  - Part 5 makes provision about transactions involving transfers from a partnership to a partner or certain other persons (including transfers between partnerships),
  - Part 7 makes provision about transfers of interest in, and transactions involving, a property investment partnership,
  - Part 8 makes provision about the application of provisions of this Act on exemptions, reliefs, and notification to transactions falling within Parts 4 to 7,
  - Part 9 defines expressions used in this schedule.

**PART 2**

GENERAL PROVISIONS

*Meaning of “partnership”*

- 2 In this Act, “partnership” means—
- (a) a partnership within the Partnership Act 1890 (c.39),
  - (b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24),
  - (c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),
  - (d) a firm or entity of a similar character to any of those mentioned in paragraphs (a) to (c) formed under the law of a country or territory outside the United Kingdom.

*Chargeable interests treated as being held by partners etc.*

- 3 (1) For the purposes of this Act—
- (a) a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners, and

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- (b) a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners, and not by or on behalf of the partnership as such.
- (2) Sub-paragraph (1) applies notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

*Acquisition of interest in partnership not chargeable except as specially provided*

- 4 The acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land, except as provided by—
- (a) Part 4 of this schedule (transfer of chargeable interest to a partnership),
  - (b) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements), or
  - (c) paragraph 32 (transfer of interest in property-investment partnership).

*Continuity of partnership*

- 5 For the purposes of this Act, a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

*Partnership not to be regarded as unit trust scheme etc.*

- 6 A partnership is not to be regarded for the purposes of this Act as a unit trust scheme or an open ended investment company.

### **PART 3**

#### **ORDINARY PARTNERSHIP TRANSACTIONS**

*Introduction*

- 7 This Part of this schedule applies to land transactions entered into as buyer by or on behalf of the members of a partnership, other than transactions within Parts 4 to 7 of this schedule.

*Responsibility of partners*

- 8 (1) Anything required or authorised to be done under this Act by or in relation to the buyer in the transaction is required or authorised to be done by or in relation to all the responsible partners.
- (2) The responsible partners in relation to a transaction are—
- (a) the persons who are partners at the effective date of the transaction, and
  - (b) any person who becomes a member of the partnership after that date.
- (3) This paragraph has effect subject to paragraph 9 (representative partners).

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*Representative partners*

- 9 (1) Anything required or authorised to be done by or in relation to the responsible partners may instead be done by or in relation to any representative partner or partners.
- (2) This includes making the declaration required by section 36 (declaration that return is complete and correct).
- (3) A representative partner means a partner nominated by a majority of the partners to act as the representative of the partnership for the purposes of this Act.
- (4) Any such nomination, or the revocation of such a nomination, has effect only after notice of the nomination, or revocation, has been given to the Tax Authority.

*Joint and several liability of responsible partners*

- 10 (1) Where the responsible partners are liable to make a payment of tax, the liability is a joint and several liability of those partners.
- (2) No amount may be recovered by virtue of sub-paragraph (1) 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.

**PART 4**

TRANSACTIONS INVOLVING TRANSFER TO A PARTNERSHIP

*Overview of Part*

- 11 This Part of this schedule is arranged as follows—
- paragraphs 12 to 16 make provision about the treatment of certain land transactions involving the transfer of a chargeable interest to a partnership,
- paragraphs 17 and 18 provide for certain events following such transactions to be treated as land transactions.

*Circumstances in which this Part applies*

- 12 (1) This Part of this schedule applies where—
- (a) a partner transfers a chargeable interest to the partnership,
- (b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or
- (c) a person connected with—
- (i) a partner, or
- (ii) a person who becomes a partner as a result of or in connection with the transfer,
- transfers a chargeable interest to the partnership.
- (2) This Part of this schedule applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.
- (3) In this Part of this schedule—
- “the land transfer” means the transaction mentioned in sub-paragraph (1), and

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“the partnership” means the partnership to which the chargeable interest is transferred.

(4) This paragraph has effect subject to any election under paragraph 35.

*Calculation of chargeable consideration etc.*

13 (1) The chargeable consideration for the land transfer is taken to be equal to—  
$$MV \times (100 - SLP)\%$$

where—

MV is the market value of the interest transferred, and  
SLP is the sum of the lower proportions determined in accordance with paragraph 14.

(2) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the land transfer, but the responsible partners are—

- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
- (b) any person becoming a partner as a result of, or in connection with, the transfer.

(3) This paragraph does not apply if the whole or part of the chargeable consideration for the land transfer is rent (see paragraph 29 (application of Parts 3 to 5 to leases)).

*Sum of the lower proportions*

14 The sum of the lower proportions in relation to the land transfer is determined as follows.

*Step 1*

Identify the relevant owner or owners.

*Step 2*

For each relevant owner, identify the corresponding partner or partners.

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

*Step 3*

For each relevant owner, find the proportion of the chargeable interest to which the owner was entitled immediately before the land transfer.

Apportion that proportion between any one or more of the relevant owner’s corresponding partners.

*Step 4*

Find the lower of the following proportions (“the lower proportion”) for each corresponding partner—

- (a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,
- (b) the partner’s partnership share immediately after the land transfer.

*Step 5*

Add together the lower proportions for each corresponding partner.

The result is the sum of the lower proportions.

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### *Relevant owner*

- 15 (1) For the purposes of paragraph 14 (see Step 1), a person is a relevant owner if—
- (a) immediately before the land transfer, the person was entitled to a proportion of the chargeable interest, and
  - (b) immediately after the land transfer, the person is a partner or connected with a partner.
- (2) For the purposes of this paragraph and paragraph 14, persons who are entitled to a chargeable interest as joint owners are to be taken to be entitled to the chargeable interest as common owners in equal shares.

### *Corresponding partner*

- 16 (1) For the purposes of paragraph 14 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately after the land transfer—
- (a) the person is a partner, and
  - (b) the person is the relevant owner or is an individual connected with the relevant owner.
- (2) For the purposes of sub-paragraph (1)(b) 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 1122(6) of the Corporation Tax Act 2010 (c.4).

### *Transfer of partnership interest pursuant to earlier arrangements*

- 17 (1) This paragraph applies where—
- (a) subsequent to the land transfer, there is a transfer of an interest in the partnership (“the partnership transfer”),
  - (b) the partnership transfer is made—
    - (i) if the land transfer falls within paragraph 12(1)(a) or (b), by the person who makes the land transfer,
    - (ii) if the land transfer falls within paragraph 12(1)(c), by the partner concerned,
  - (c) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer,
  - (d) the partnership transfer is not (apart from this paragraph) a chargeable transaction.
- (2) The partnership transfer—
- (a) is to be treated as a land transaction, and
  - (b) is a chargeable transaction.
- (3) The partners are taken to be the buyers under the transaction.
- (4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.
- (5) That proportion is—

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- (a) if the person making the partnership transfer is not a partner immediately after the transfer, the person's partnership share immediately before the transfer,
  - (b) if that person is a partner immediately after the transfer, the difference between that person's partnership share before and after the transfer.
- (6) The partnership transfer and the land transfer are taken to be linked transactions.
- (7) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

*Withdrawal of money etc. from partnership after transfer of chargeable interest*

- 18 (1) This paragraph applies where, during the period of 3 years beginning with the date of the land transfer, a qualifying event occurs.
- (2) A qualifying event is—
- (a) a withdrawal from the partnership of money or money's worth which does not represent income profit by the relevant person—
    - (i) withdrawing capital from the person's capital account,
    - (ii) reducing the person's interest, or
    - (iii) ceasing to be a partner, or
  - (b) in a case where the relevant person has made a loan to the partnership—
    - (i) the repayment (to any extent) by the partnership of the loan, or
    - (ii) a withdrawal by the relevant person from the partnership of money or money's worth which does not represent income profit.
- (3) For this purpose the relevant person is—
- (a) where land transfer falls within paragraph 12(1)(a) or (b), the person who makes the land transfer,
  - (b) where the land transfer falls within paragraph 12(1)(c), the partner concerned or a person connected with the partner.
- (4) The qualifying event—
- (a) is treated as a land transaction, and
  - (b) is a chargeable transaction.
- (5) The partners are taken to be the buyers under the transaction.
- (6) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the transaction.
- (7) The chargeable consideration for the transaction is taken to be—
- (a) in a case falling within sub-paragraph (2)(a), equal to the value of the money or money's worth withdrawn from the partnership,
  - (b) in a case falling within sub-paragraph (2)(b)(i), equal to the amount repaid,

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- (c) in a case falling within sub-paragraph (2)(b)(ii) equal to so much of the value of the money or money's worth withdrawn from the partnership as does not exceed the amount of the loan.
- (8) But (in any case) the chargeable consideration determined under sub-paragraph (7) is not to exceed the market value, as at the effective date of the land transfer, of the chargeable interest transferred by the land transfer, reduced by any amount previously chargeable to tax.
- (9) The amount of tax payable by virtue of this paragraph in respect of the qualifying event (if any) is to be reduced (but not below nil) by any amount of tax payable by virtue of paragraph 32 (transfer for consideration of interest in property investment partnership) in respect of the event.

## PART 5

### TRANSACTIONS INVOLVING TRANSFER FROM A PARTNERSHIP

#### *Overview of Part*

- 19 This Part of this schedule is arranged as follows—
- paragraphs 20 to 26 make provision about certain land transactions involving the transfer of a chargeable interest from a partnership,
  - paragraph 27 makes special provision where the transaction involves a transfer from a partnership to a partnership,
  - paragraph 28 makes special provision where the partnership consists entirely of bodies corporate.

#### *Circumstances in which Part applies*

- 20 (1) This Part of this schedule applies where a chargeable interest is transferred—
- (a) from a partnership to a person who is or has been one of the partners, or
  - (b) from a partnership to a person connected with a person who is or has been one of the partners.
- (2) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist is to be treated as remaining partnership property until it is distributed.
- (3) In this Part of this schedule—
- “the land transfer” means the transaction mentioned in sub-paragraph (1), and
  - “the partnership” means the partnership from which the chargeable interest is transferred.
- (4) This paragraph has effect subject to any election under paragraph 35.

#### *Calculation of chargeable consideration*

- 21 (1) The chargeable consideration for the land transfer is (subject to paragraph 28) taken to be equal to—
- $$MV \times (100 - SLP)\%$$



where—

MV is the market value of the interest transferred, and

SLP is the sum of the lower proportions determined in accordance with paragraph 22.

- (2) This paragraph does not apply if the whole or part of the chargeable consideration for the transaction is rent (see paragraph 29 (application of Parts 3 to 5 to leases)).

### *Sum of the lower proportions*

22 The sum of the lower proportions in relation to the land transfer is determined as follows.

#### *Step 1*

Identify the relevant owner or owners.

#### *Step 2*

For each relevant owner, identify the corresponding partner or partners.

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

#### *Step 3*

For each relevant owner, find the proportion of the chargeable interest to which the owner is entitled immediately after the land transfer.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

#### *Step 4*

Find the lower of the following proportions (“the lower proportion”) for each corresponding partner—

- (a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,
- (b) the partnership share attributable to the partner.

#### *Step 5*

Add together the lower proportions of each corresponding partner.

The result is the sum of the lower proportions.

### *Relevant owner*

- 23 (1) For the purposes of paragraph 22 (see Step 1), a person is a relevant owner if—
- (a) immediately after the land transfer, the person is entitled to a proportion of the chargeable interest, and
  - (b) immediately before the land transfer, the person was a partner or connected with a partner.
- (2) For the purposes of this paragraph and paragraph 22, persons who are entitled to a chargeable interest as joint owners are taken to be entitled to the chargeable interest as common owners in equal shares.

### *Corresponding partner*

- 24 (1) For the purposes of paragraph 22 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately before the land transfer—

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- (a) the person was a partner, and
  - (b) the person was the relevant owner or was an individual connected with the relevant owner.
- (2) For the purposes of sub-paragraph (1)(b), 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 1122(6) of the Corporation Tax Act 2010 (c.4).

*Partnership share attributable to partner*

- 25 (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 22 (see Step 4).
- (2) Where any tax payable in respect of the transfer of the relevant chargeable interest to the partnership has not been paid under this Act, the partnership share attributable to a partner is zero.
- (3) Where the partner ceases to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.
- (4) In any other case, paragraph 26 applies for determining the partnership share attributable to a partner.
- (5) In this paragraph and paragraph 26, the relevant chargeable interest is—
- (a) the chargeable interest which ceases to be partnership property as a result of the land transfer, or
  - (b) where the land transfer is the creation of a chargeable interest, the chargeable interest out of which that interest is created.
- 26 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows.

*Step 1*

Find the partner's actual partnership share on the relevant date.

The relevant date—

- (a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date,
- (b) if the partner became a partner after that date, is the date on which the partner became a partner.

*Step 2*

Add to that partnership share any increases in the partner's partnership share which—

- (a) occur in the period starting on the day after the relevant date and ending immediately before the land transfer, and
- (b) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if any tax payable in respect of the transfer which resulted in the increase has been duly paid under this Act.

*Step 3*

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Deduct from the increased partnership share any decreases in the partner's partnership share which occur in the period starting on the day after the relevant date and ending immediately before the land transfer.

The result is the partnership share attributable to the partner.

- (2) If the effect of applying Step 3 would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.

*Transfer of chargeable interest from a partnership to a partnership*

- 27 (1) This paragraph applies where—
- (a) there is a transfer of a chargeable interest from a partnership to a partnership, and
  - (b) the transfer is both—
    - (i) a transaction to which Part 4 of this schedule applies, and
    - (ii) a transaction to which this Part of this schedule applies.
- (2) Paragraphs 13(1) and 21(1) do not apply.
- (3) The chargeable consideration for the transaction is taken to be what it would have been if paragraph 13(1) had applied or, if greater, what it would have been if paragraph 21(1) had applied.

*Transfer of chargeable interest from a partnership consisting wholly of bodies corporate*

- 28 (1) This paragraph applies where—
- (a) immediately before the land transfer all the partners are bodies corporate, and
  - (b) the sum of the lower proportions is 75 or more.
- (2) Paragraphs 21, 27 and 29 have effect subject to the following modifications.
- (3) For paragraph 21 substitute—
- “21 The chargeable consideration for the land transfer is taken to be equal to the market value of the interest transferred.”.
- (4) In paragraph 27(2) and (3), for “21(1)” substitute “21”.
- (5) In paragraph 29—
- (a) in sub-paragraph (2), for “sub-paragraphs (3) to (6)” substitute “sub-paragraph (5)”,
  - (b) omit sub-paragraphs (3), (4), (6), (7) and (9).
- (6) Paragraph 22 provides for determining the sum of the lower proportions.

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## PART 6

### APPLICATION OF PARTS 3 TO 5 TO LEASES

#### *Application of Parts 3 to 5 to leases*

- 29 (1) This paragraph applies in relation to a transaction to which paragraph 12 or 20 applies where the whole or part of the chargeable consideration for the transaction is rent.
- (2) Schedule 19 (leases) has effect with the modifications set out in sub-paragraphs (3) to (6).
- (3) In paragraph 4—
- (a) in Step 1, for “the net present value (NPV) of the rent payable over the term of the lease” substitute “the relevant chargeable proportion of the net present value (NPV) of the rent payable over the term of the lease”, and
  - (b) in Step 2, for “the NPV” substitute “the relevant chargeable proportion”.
- (4) In paragraph 5—
- (a) in Step 1, for “the total of the net present values (TNPV) of the rent payable over the terms of all the leases” substitute “the total of the relevant chargeable proportions of the net present values (TNPV) of the rent payable over the terms of all the leases”,
  - (b) in Step 2, for “the TNPV” substitute “the total of the relevant chargeable proportions”, and
  - (c) in Step 4—
    - (i) for “the net present value” substitute “the relevant chargeable proportion”, and
    - (ii) for “the TNPV” substitute “the total of the relevant chargeable proportions”.
- (5) In paragraph 8(1), for “paragraph 9” substitute “paragraph 13 or 21 of schedule 17 and paragraph 9 of this schedule”.
- (6) In paragraph 9(6)—
- (a) in paragraph (a), for “the annual rent” substitute “the relevant chargeable proportion of the annual rent”, and
  - (b) in paragraph (b), for “the total of the annual rents” substitute “the relevant chargeable proportion of the total of the annual rents”.
- (7) For the purposes of schedule 19 as modified by this paragraph, the relevant chargeable proportion is—
- $$(100 - \text{SLP})\%$$
- where SLP is the sum of the lower proportions.
- (8) The following paragraphs apply for determining the sum of the lower proportions—
- (a) in the case of a transaction to which paragraph 12 applies, paragraph 14, and
  - (b) in the case of a transaction to which paragraph 20 applies, paragraph 22.
- (9) In the case of a transaction to which paragraph 20 applies, this paragraph is subject to paragraph 28.

## PART 7

### PROPERTY INVESTMENT PARTNERSHIPS

#### *Overview of Part*

- 30 This Part of this schedule is arranged as follows—
- paragraphs 32 to 34 make provision about certain transactions involving the transfer of an interest in a property investment partnership,
  - paragraph 35 provides that a property investment partnership may elect to disapply paragraph 12 in relation to certain land transactions.

#### *Meaning of “property investment partnership”*

- 31 (1) In this schedule, “property-investment partnership” means a partnership whose sole or main activity is investing or dealing in chargeable interests (whether or not that activity involves the carrying out of construction operations on the land in question).
- (2) For the purposes of sub-paragraph (1) “chargeable interests” includes any interest which would be a chargeable interest but for the fact that it relates to land outwith Scotland.
- (3) In sub-paragraph (1) “construction operations” has the same meaning as in Chapter 3 of Part 3 of the Finance Act 2004 (see section 74 of that Act).

#### *Transfer of interest in partnership treated as land transaction*

- 32 (1) This paragraph applies where—
- (a) there is a transfer of an interest in a property-investment partnership, and
  - (b) the relevant partnership property includes a chargeable interest.
- (2) The transfer—
- (a) is treated as a land transaction, and
  - (b) is a chargeable transaction.
- (3) The buyer in the transaction is the person who acquires an increased partnership share or, as the case may be, becomes a partner in consequence of the transfer.
- (4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value of the relevant partnership property.
- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, the person’s partnership share immediately after the transfer,
  - (b) if the person was a partner before the transfer, the difference between the person’s partnership share before and after the transfer.
- (6) The relevant partnership property, in relation to a Type A transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
- (a) any chargeable interest that was transferred to the partnership in connection with the transfer,
  - (b) a lease to which paragraph 33 (exclusion of market rent leases) applies, and

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- (c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred.
- (7) The relevant partnership property, in relation to a Type B transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
  - (a) any chargeable interest that was transferred to the partnership in connection with the transfer,
  - (b) a lease to which paragraph 33 (exclusion of market rent leases) applies,
  - (c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred,
  - (d) any chargeable interest in respect of whose transfer to the partnership an election has been made under paragraph 35, and
  - (e) any other chargeable interest whose transfer to the partnership did not fall within paragraph 12(1)(a), (b) or (c).
- (8) A Type A transfer is—
  - (a) a transfer that takes the form of arrangements entered into under which—
    - (i) the whole or part of a partner’s interest as partner is acquired by another person (who may be an existing partner), and
    - (ii) consideration in money or money’s worth is given by or on behalf on the person acquiring the interest, or
  - (b) a transfer that takes the form of arrangements entered into under which—
    - (i) a person becomes a partner,
    - (ii) the interest of an existing partner in the partnership is reduced or an existing partner ceases to be a partner, and
    - (iii) there is a withdrawal of money or money’s worth from the partnership by the existing partner mentioned in sub-paragraph (ii) (other than money or money’s worth paid from the resources available to the partnership prior to the transfer).
- (9) Any other transfer to which this paragraph applies is a Type B transfer.
- (10) An interest in respect of the transfer of which this paragraph applies is to be treated as a chargeable interest for the purposes of paragraph 15 of schedule 10 to the extent that the relevant partnership property consists of a chargeable interest.

*Exclusion of market rent leases*

- 33 (1) A lease held as partnership property immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 32(6) or (7) if the following four conditions are met.
- (2) The first condition is that—
    - (a) no chargeable consideration other than rent has been given in respect of the grant of the lease, and
    - (b) no arrangements are in place at the time of the transfer for any chargeable consideration other than rent to be given in respect of the grant of the lease.
  - (3) The second condition is that the rent payable under the lease as granted was a market rent at the time of the grant.
  - (4) The third condition is that—

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- (a) the term of the lease is 5 years or less, or
  - (b) if the term of the lease is more than 5 years—
    - (i) the lease provides for the rent payable under it to be reviewed at least once in every 5 years of the term, and
    - (ii) the rent payable under the lease as a result of a review is required to be a market rent at the review date.
- (5) The fourth condition is that there has been no change to the lease since it was granted which is such that, immediately after the change has effect, the rent payable under the lease is less than a market rent.
- (6) The market rent of a lease at any time is the rent which the lease might reasonably be expected to fetch at that time in the open market.
- (7) A review date is a date from which the rent determined as a result of a rent review is payable.

*Partnership interests: application of provisions about exchanges etc.*

- 34 (1) Where paragraph 5 of schedule 2 (exchanges) applies to the acquisition of an interest in a partnership in consideration of entering into a land transaction with an existing partner, the interest in the partnership is to be treated as a major interest in land for the purposes of that paragraph if the relevant partnership property includes a major interest in land.
- (2) In sub-paragraph (1) “relevant partnership property” has the meaning given by paragraph 32(6) or (7) (as appropriate).
- (3) The provisions of paragraph 6 of schedule 2 (partition etc.: disregard of existing interest) do not apply where this paragraph applies.

*Election by property-investment partnership to disapply Part 4*

- 35 (1) Part 4 of this schedule does not apply to a transfer of a chargeable interest to a property-investment partnership if the buyer in relation to the transaction elects for that paragraph not to apply.
- (2) Where an election under this paragraph is made in respect of a transaction—
  - (a) Part 5 of this schedule (if relevant) is also disappplied,
  - (b) the chargeable consideration for the transaction is taken to be the market value of the chargeable interest transferred, and
  - (c) the transaction falls within Part 3 of this schedule.
- (3) An election under this paragraph must be included in the land transaction return made in respect of the transaction or in an amendment of that return.
- (4) Such an election is irrevocable and a land transaction return may not be amended so as to withdraw the election.
- (5) Where an election under this paragraph in respect of a transaction (the “main transaction”) is made in an amendment of the land transaction return—
  - (a) the election has effect as if it had been made on the date on which the land transaction return was made, and

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- (b) any land transaction return in respect of an affected transaction may be amended (within the period allowed for amendment of that return) to take account of that election.
- (6) In sub-paragraph (5) “affected transaction”, in relation to the main transaction, means a transaction—
- (a) to which paragraph 32 applied, and
  - (b) with an effective date on or after the effective date of the main transaction.

## PART 8

### APPLICATION OF PROVISIONS ON EXEMPTIONS, RELIEFS AND NOTIFICATION

#### *Overview of Part*

- 36 This Part of this schedule is arranged as follows—
- paragraph 37 makes general provision about the application of exemptions and reliefs to transactions mentioned in Parts 4 to 7 of this schedule,
  - paragraphs 38 and 39 makes provision about the application of group relief to certain transactions mentioned in Part 4 of this schedule,
  - paragraph 40 makes provision about the application of charities relief to certain transfers of interest in a partnership,
  - paragraph 41 makes provision about the notification of certain transfers of interest in a partnership.

#### *Application of exemptions and reliefs: general*

- 37 (1) Paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply to—
- (a) a transaction to which Part 4 applies,
  - (b) a transaction to which Part 5 applies, or
  - (c) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17 or 32.
- (2) But subject to paragraphs 38 and 40 this schedule has effect subject to any other provision affording exemption or relief from the tax.

#### *Application of group relief*

- 38 (1) Schedule 10 (group relief) applies with the following modifications to—
- (a) a transaction to which Part 4 applies, and
  - (b) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17.
- (2) For paragraphs 14 and 15 substitute—
- “14 This paragraph applies where a partner who was a partner at the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant partner” and “the relevant transaction” respectively) ceases to be a member of the same group as the seller—



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- (a) before the end of the period of 3 years beginning with the effective date of the transaction, or
  - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- 15 This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—
  - (a) was acquired by or on behalf of the partnership under the relevant transaction, or
  - (b) is derived from a chargeable interest so acquired, and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”.
- (3) For paragraph 19(b), substitute—
  - “(b) what is held at the relevant time by or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership.”.
- (4) In paragraphs 20 to 42, for “the buyer” (wherever appearing) substitute “the relevant partner”.
- 39 (1) This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 14)—
  - (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 16 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 is to 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 schedule 10 apply to the relief under sub-paragraph (2) as to group relief under paragraph 2 of that schedule, but—
  - (a) with the omission of paragraph 5(a),
  - (b) with the substitution for paragraphs 14 and 15 of—
    - “14 This paragraph applies where a partner (“the relevant partner”) who was, at the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), a partner and a member of the same group as the transferor, ceases to be a member of the same group as the seller—
      - (a) before the end of the period of 3 years beginning with the effective date of the transaction, or
      - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
    - 15 This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the

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relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

- (a) was acquired by or on behalf of the partnership under the relevant transaction, or
  - (b) is derived from a chargeable interest so acquired, and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”,
- (c) with the other modifications specified in paragraph 38(3) and (4).

#### *Application of charities relief*

- 40 (1) Schedule 13 (charities relief) applies to the transfer of interest in a partnership that is a chargeable transaction by virtue of paragraph 17 or 32 with these modifications.
- (2) In paragraph 1, for “A land transaction is exempt from charge if the buyer is a charity” substitute “A transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 or 32 of schedule 17 is exempt from charge if the transferee is a charity”.
- (3) For paragraph 2(a), substitute—
- “(a) that every chargeable interest held as partnership property immediately after the transfer must be held for qualifying charitable purposes.”.
- (4) In paragraph 2(b), for “the buyer” substitute “the transferee”.
- (5) In paragraph 3, for “A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it” substitute “A chargeable interest is held for qualifying charitable purposes if it is held”.
- (6) In paragraph 3(a), for “the buyer” substitute “the transferee”.
- (7) In paragraph 3(b), for “the buyer” substitute “the partners”.
- (8) For paragraph 4(b) substitute—
- “(b) at the time of the disqualifying event the partnership property includes a chargeable interest—
    - (i) that was held as partnership property immediately after the relevant transaction, or
    - (ii) that is derived from an interest held as partnership property at that time.”.
- (9) In paragraph 5(a), for “the buyer” substitute “the transferee”.
- (10) For paragraph 5(b) substitute—
- “(b) any chargeable interest held as partnership property immediately after the relevant transaction, or any interest or right derived from it, being used or held otherwise than for qualifying charitable purposes.”.
- (11) For paragraph 10 substitute—
- “10 An “appropriate proportion” means an appropriate proportion having regard to—

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- (a) the chargeable interests held as partnership property immediately after the relevant transaction and the chargeable interests held as partnership property at the time of the disqualifying event, and
- (b) the extent to which any chargeable interest held as partnership property at that time becomes used or held for purposes other than qualifying charitable purposes.”.

(12) After paragraph 17 insert—

- “18 There is a transfer of an interest in a partnership for the purposes of this schedule if there is such a transfer for the purposes of Part 3 of schedule 17 (see paragraph 48 of that schedule).
- 19 Paragraph 43 of schedule 17 (meaning of references to partnership property) applies for the purposes of this schedule as it applies for the purposes of that schedule.”.

#### *Notification of transfers of partnership interests*

- 41 (1) A transaction which is a chargeable transaction by virtue of paragraph 17 or 32 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the nil rate tax band.
- (2) The consideration for a transaction exceeds the nil rate tax band if—
- (a) the chargeable consideration, or
  - (b) where the transaction is one of a number of linked transactions, the total of the chargeable consideration for all the linked transactions, exceeds the nil rate tax band applicable to the transaction.

## **PART 9**

### INTERPRETATION

#### *Introduction*

- 42 This Part of this schedule defines expressions used in this schedule.

#### *Partnership property*

- 43 Any reference to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.

#### *Partnership share*

- 44 Any reference to a person’s partnership share at any time is to the proportion in which the person is entitled at that time to share in the income profits of the partnership.

#### *Transfer of chargeable interest*

- 45 References to the transfer of a chargeable interest include—
- (a) the creation of a chargeable interest,

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- (b) the renunciation or release of a chargeable interest, and
- (c) the variation of a chargeable interest.

*Transfer of chargeable interest to a partnership*

- 46 For the purposes of this schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

*Transfer of chargeable interest from a partnership*

- 47 For the purposes of this schedule, there is a transfer of a chargeable interest from a partnership in any case where—
- (a) a chargeable interest that was partnership property ceases to be partnership property, or
  - (b) a chargeable interest is created out of partnership property and the interest is not partnership property.

*Transfer of interest in a partnership*

- 48 For the purposes of this schedule, where a person acquires a partnership share or a person's partnership share increases there is a transfer of an interest in the partnership (to that partner and from the other partners).

*Connected persons*

- 49 In the application of section 1122 of the Corporation Tax Act 2010 (connected persons) for the purposes of this schedule—
- (a) that section has effect with the omission of subsection (7) (partners connected with each other), and
  - (b) for the purposes of paragraph 12 or 22, that section has effect with the omission of subsection (6)(c) to (e) (trustee connected with settlement).

*Arrangements*

- 50 “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

**SCHEDULE 18**

*(introduced by section 50)*

**TRUSTS**

**PART 1**

**OVERVIEW**

*Overview*

- 1 (1) This schedule makes provision about the application of this Act in relation to trusts.

(2) It is arranged as follows—

- Part 2 makes provision for the application of this Act to trusts generally,
- Part 3 makes provision for the treatment of certain transactions involving bare trusts,
- Part 4 makes provision for the treatment of certain transactions involving settlements,
- Part 5 makes provision for the liability of trustees of a settlement to pay the tax and make returns and declarations,
- Part 6 defines expressions used in this schedule.

## PART 2

### TREATMENT OF TRUSTS AND BENEFICIARIES GENERALLY

#### *Interests of beneficiaries under certain trusts*

- 2 Paragraphs 3 and 4 apply where property is held in trust—
- (a) under the law of Scotland, or
  - (b) under the law of a country or territory outwith the United Kingdom,
- on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.
- 3 The beneficiary is to be treated for the purpose of this Act as having a beneficial interest in the trust property despite the fact that no such interest is recognised by the law of Scotland or of the country or territory outwith the United Kingdom.
- 4 An acquisition of the interest of a beneficiary under the trust is to be treated as involving the acquisition of an interest in the trust property.

## PART 3

### TRANSACTIONS INVOLVING BARE TRUSTS

#### *Acquisition of chargeable interest by bare trustee*

- 5 Where a person (T) acquires a chargeable interest or an interest in a partnership as bare trustee, this Act applies as if the interest were vested in, and the acts of T in relation to it were the acts of the person or persons for whom T is trustee.
- 6 However, any tax due by the person or persons may, without prejudice to any other method of recovery, be recovered from T.
- 7 Paragraphs 5 and 6 do not apply in relation to the grant of a lease.

#### *Grant of lease to bare trustee*

- 8 Where a lease is granted to a person as bare trustee, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as buyer of the whole of the interest acquired.

*Grant of lease by bare trustee*

- 9 Where a person, as bare trustee, grants a lease, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as seller of the whole of the interest disposed of.

**PART 4**

## TRANSACTIONS INVOLVING SETTLEMENTS

*Acquisition by trustees of settlements*

- 10 Where persons, as trustees of a settlement, acquire a chargeable interest or an interest in a partnership, they are to be treated for the purposes of this Act, as it applies to that acquisition, as buyers of the whole of the interest acquired (including the beneficial interest).

*Consideration for exercise of power of appointment or discretion*

- 11 Paragraph 12 applies where a chargeable interest is acquired by virtue of—  
(a) the exercise of a power of appointment, or  
(b) the exercise of a discretion vested in trustees of a settlement.
- 12 Any consideration given for the person in whose favour the appointment was made or the discretion was exercised becoming an object of the power or discretion is to be treated for the purpose of this Act as the consideration for the acquisition of the interest.

*Reallocation of trust property as between beneficiaries*

- 13 Paragraph 14 applies where—  
(a) the trustees of a settlement reallocate trust property in such a way that a beneficiary acquires an interest in certain trust property and ceases to have an interest in other trust property, and  
(b) the beneficiary consents to ceasing to have an interest in that other property.
- 14 The fact that the beneficiary gives consent does not mean that there is chargeable consideration for the acquisition.

**PART 5**

## SETTLEMENTS: PAYMENT OF TAX AND RETURNS

*Liability to pay the tax*

- 15 Where the trustees of a settlement are liable to pay the tax, the payment may be recovered (but only once) from any one or more of the responsible trustees.

*Liability to make returns*

- 16 A return in relation to a land transaction may be made by any one or more of the responsible trustees in relation to the transaction (the “relevant trustees”).

*Duty to make declaration*

- 17 The declaration required by section 36(1) or (2)(a) must be made by all the relevant trustees.

*Responsible trustees*

- 18 The responsible trustees, in relation to a land transaction, are—
- (a) the persons who are trustees at the effective date of the transaction, and
  - (b) any person who subsequently becomes a trustee.

## PART 6

### INTERPRETATION

*Meaning of “bare trust”*

- 19 In this schedule, a “bare trust”—
- (a) is a trust under which the property is held by a person as trustee—
    - (i) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being under a legal disability by reason of non-age or under another disability, or
    - (ii) for two or more persons who are or would be jointly so entitled, and
  - (b) includes a case in which a person holds property as a nominee for another.

*Meaning of “absolutely entitled”*

- 20 The references in paragraph 19 to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee—
- (a) to resort to the property for payment of duty, taxes, costs or other outgoings,  
or
  - (b) to direct how the property is to be dealt with.

*Meaning of “settlement”*

- 21 In this schedule, “settlement” means a trust that is not a bare trust.

**SCHEDULE 19***(introduced by section 52)***LEASES****PART 1****INTRODUCTORY***Overview*

- 1 (1) This schedule makes provision about the application of this Act in relation to leases.
- (2) It is arranged as follows—
- Part 2 makes provision for the calculation of the tax chargeable in relation to chargeable consideration which consists of rent,
  - Part 3 makes provision about the calculation of the tax chargeable in relation to other chargeable consideration,
  - Part 4 makes provision for the review of tax chargeable at periodic intervals and on certain events,
  - Part 5 makes provision about chargeable consideration in relation to leases, including consideration which consists of rent, consideration other than rent and consideration that is not treated as chargeable consideration,
  - Part 6 makes provision about duration of leases and about the application of this Act to transactions involving leases generally.

*Calculation of tax chargeable where chargeable consideration includes rent*

- 2 Where the chargeable consideration for a chargeable transaction to which this schedule applies consists of rent (or includes rent and chargeable consideration other than rent), the tax chargeable is the sum of—
- (a) any tax chargeable on so much of the chargeable consideration as consists of rent, and
  - (b) any tax chargeable on so much of the chargeable consideration other than rent.

**PART 2****AMOUNT OF TAX CHARGEABLE: RENT***Tax rates and tax bands*

- 3 (1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band applicable to chargeable consideration which consists of rent.
- (2) An order under sub-paragraph (1) must specify—
- (a) a nil rate tax band and at least one other tax band,
  - (b) the tax rate for the nil rate tax band, which must be 0%, and
  - (c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.



*Amount of tax chargeable in respect of rent*

- 4 The amount of tax chargeable on so much of the chargeable consideration as consists of rent is to be determined as follows.

*Step 1*

Calculate the net present value (NPV) of the rent payable over the term of the lease (see paragraph 6).

*Step 2*

For each tax band, multiply so much of the NPV as falls within the band by the tax rate for that band.

*Step 3*

Calculate the sum of the amounts reached under Step 2.

The result is the amount of tax chargeable in respect of rent.

*Amount of tax chargeable in respect of rent: linked transactions*

- 5 Where a chargeable transaction to which this schedule applies is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the amount of tax chargeable in respect of the rent is to be determined as follows.

*Step 1*

Calculate the total of the net present values (TNPV) of the rent payable over the terms of all the leases (see paragraph 6).

*Step 2*

For each tax band, multiply so much of the TNPV as falls within the band by the tax rate for that band.

*Step 3*

Calculate the sum of the amounts reached under Step 2.

The result is the total tax chargeable in respect of rent.

*Step 4*

Divide the net present value of the rent payable over the term of the lease in question by the TNPV.

*Step 5*

Multiply the total tax chargeable in respect of rent by the fraction reached under Step 4.

The result is the amount of tax chargeable in respect of rent for the lease in question.

*Net present value*

- 6 The net present value (NPV) of the rent payable over the term of a lease is calculated by applying the following formula—

$$NPV = \sum_{i=1}^n \frac{r_i}{(1+T)^i}$$

where—

$r_i$  is the rent payable in respect of year  $i$ ,

$i$  is the first, second, third etc. year of the term of the lease,

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n is the term of the lease, and  
T is the temporal discount rate (see paragraph 7).

*Temporal discount rate*

- 7 (1) For the purposes of this schedule the “temporal discount rate” is 3.5% or such other rate as may be specified by the Scottish Ministers by order.
- (2) An order under this paragraph may—
- (a) specify a rate or make provision for any such rate to be determined by reference to such rate or the average of such rates as may be referred to in the order,
  - (b) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
  - (c) provide for rates arrived at by reference to averages to be rounded up or down, and
  - (d) provide for circumstances in which alteration of a rate is or is not to take place.

**PART 3**

AMOUNT OF TAX CHARGEABLE: CONSIDERATION OTHER THAN RENT

*Amount of tax chargeable in respect of consideration other than rent: general*

- 8 (1) Where in the case of a transaction to which this schedule applies there is chargeable consideration other than rent, the provisions of this Act apply in relation to that consideration as in relation to other chargeable consideration (but see paragraph 9).
- (2) Where a transaction to which this schedule applies falls to be taken into account as a linked transaction for the purposes of section 26, no account is to be taken of rent in determining the relevant consideration.

*Amount of tax chargeable in respect of consideration other than rent: nil rate tax band*

- 9 (1) This paragraph applies in the case of a transaction to which this schedule applies where—
- (a) there is chargeable consideration other than rent, and
  - (b) section 25 or 26 applies to the transaction.
- (2) If the relevant rent is at least £1,000, the nil rate tax band does not apply in relation to the consideration other than rent and any such consideration that would have fallen within that band is treated as falling within the next tax band.
- (3) Sub-paragraphs (4) and (5) apply if—
- (a) the transaction to which this schedule applies is one of a number of linked transactions,
  - (b) the relevant land is partly residential property and partly non-residential property, and

- (c) the relevant rent attributable, on a just and reasonable apportionment, to the land that is non-residential property is at least £1,000.
- (4) For the purposes of determining the amount of tax chargeable under section 26 in relation to the consideration other than rent, the transactions are treated as if they were two sets of transactions, namely—
  - (a) one whose subject-matter consists of all of the interests in land that is residential property, and
  - (b) one whose subject-matter consists of all of the interests in land that is non-residential property.
- (5) For that purpose, the chargeable consideration attributable to each of those separate sets of linked transactions is the chargeable consideration so attributable on a just and reasonable apportionment.
- (6) In this paragraph “the relevant rent” means—
  - (a) the annual rent in relation to the transaction in question, or
  - (b) if that transaction is one of a number of linked transactions for which the chargeable consideration consists of or includes rent, the total of the annual rents in relation to all of those transactions.
- (7) In sub-paragraph (6) the “annual rent” means—
  - (a) the average annual rent over the term of the lease, or
  - (b) if—
    - (i) different amounts of rent are payable for different parts of the term, and
    - (ii) those amounts (or any of them) are ascertainable at the effective date of the transaction,the average annual rent over the term for which the highest ascertainable rent is payable.
- (8) In this paragraph “relevant land” means—
  - (a) the land an interest in which is the main subject-matter of the transaction,
  - (b) if the transaction in question is one of a number of linked transactions, any land an interest in which is the main subject-matter of any of those transactions.

## PART 4

### REVIEW OF TAX CHARGEABLE

#### *Regular review of tax chargeable*

- 10 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—
- (a) the buyer made a land transaction return, or
  - (b) where such a return was not made, the buyer made—
    - (i) a return under section 31 (return where contingency ceases or consideration ascertained),
    - (ii) a return under paragraph 20 (return where lease for fixed term continues after end of term),

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- (iii) a return under paragraph 22 (return in relation to lease for indefinite term), or
  - (iv) a return under paragraph 30 (return where transaction becomes notifiable on variation of rent or term).
- (2) The buyer must make a further return to the Tax Authority if, on a review date, the lease—
- (a) has not been assigned, or
  - (b) has not terminated (whether on the term of the lease coming to an end or otherwise).
- (3) The return must be made before the end of the period of 30 days beginning with the day after the review date.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at that review date.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (6) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.
- (7) In this paragraph, the “review date” is—
- (a) in the case of a transaction to which sub-paragraph (1)(a) applies, the day falling on the third anniversary of the effective date of the transaction and on each subsequent third anniversary of that date,
  - (b) where the return mentioned in sub-paragraph (1)(b)(i) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the event mentioned in section 31(2) occurred,
  - (c) where the return mentioned in sub-paragraph (1)(b)(ii) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the 1 year period mentioned in paragraph 20(3) ended and on each subsequent third anniversary of that date,
  - (d) where the return mentioned in sub-paragraph (1)(b)(iii) is the first return made in relation to the transaction, the day falling on the third anniversary of the date on which the deemed fixed term mentioned in paragraph 22(2) ended and on each subsequent third anniversary of that date,
  - (e) where the return mentioned in sub-paragraph (1)(b)(iv) is the first return made in relation to the transaction, the day falling on the third anniversary of the date the variation mentioned in paragraph 30 takes effect and on each subsequent third anniversary of that date.

*Review of tax chargeable on certain events*

- 11 (1) This paragraph applies where, in relation to a chargeable transaction to which this schedule applies—
- (a) paragraph 10 applies, and
  - (b) the lease—
    - (i) is assigned, or
    - (ii) terminates (whether on the term of the lease coming to an end or otherwise).

- (2) The buyer must make a further return to the Tax Authority.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the day (the “relevant day”) on which the lease is assigned or terminated.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction at the relevant day.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (6) Where less tax is payable in respect of the transaction than has already been paid, the overpayment is to be repaid by the Tax Authority.

## PART 5

### CHARGEABLE CONSIDERATION: RENT AND CONSIDERATION OTHER THAN RENT

#### *Rent*

- 12 (1) For the purposes of this Act, a single sum expressed to be payable in respect of rent, or expressed to be payable in respect of rent and other matters but not apportioned, is to be treated as entirely rent.
- (2) Sub-paragraph (1) is without prejudice to the application of paragraph 4 of schedule 2 (chargeable consideration: just and reasonable apportionment) where separate sums are expressed to be payable in respect of rent and other matters.

#### *Variable or uncertain rent*

- 13 (1) This paragraph applies to determine the amount of rent payable under a lease where that amount—
  - (a) varies in accordance with provision in the lease, or
  - (b) is contingent, uncertain or unascertained.
- (2) The provisions of this Act apply as in relation to other chargeable consideration and accordingly the provisions of sections 18 and 19 apply if the amount is contingent, uncertain or unascertained.
- (3) But section 20(b) does not apply.
- (4) For the purposes of this paragraph, the cases where the amount of rent payable under a lease is uncertain or unascertained include cases where there is a possibility of that amount being varied under—
  - (a) section 13, 14, 15 or 31 of the Agricultural Holdings (Scotland) Act 1991 (c.55), or
  - (b) section 9, 10 or 11 of the Agricultural Holdings (Scotland) Act 2003 (asp 11).
- (5) No account is to be taken for the purposes of this paragraph of any provision for rent to be adjusted in line with the retail prices index, consumer prices index or any other similar index.

*Reverse premium*

- 14 (1) In the case of the grant, assignation or renunciation of a lease a reverse premium does not count as chargeable consideration.
- (2) A “reverse premium” means—
- (a) in relation to the grant of a lease, a premium moving from the landlord to the tenant,
  - (b) in relation to the assignation of a lease, a premium moving from the assignor to the assignee,
  - (c) in relation to the renunciation of a lease, a premium moving from the tenant to the landlord.

*Tenant’s obligations etc. that do not count as chargeable consideration*

- 15 (1) In the case of the grant of a lease none of the following counts as chargeable consideration—
- (a) any undertaking by the tenant to repair, maintain or insure the leased premises,
  - (b) any undertaking by the tenant to pay any amount in respect of services, repairs, maintenance or insurance or the landlord’s costs of management,
  - (c) any other obligation undertaken by the tenant that is not such as to affect the rent that a tenant would be prepared to pay in the open market,
  - (d) any guarantee of the payment of rent or the performance of any other obligation of the tenant under the lease,
  - (e) any penal rent, or increased rent in the nature of a penal rent, payable in respect of the breach of any obligation of the tenant under the lease,
  - (f) any other obligation of the tenant to bear the landlord’s reasonable costs or expenses of or incidental to the grant of a lease,
  - (g) any obligation under the lease to transfer to the landlord, on the termination of the lease, payment entitlements granted to the tenant under the single payment scheme (that is, the scheme of income support for farmers in pursuance of Title III of Council Regulation (EC) No. 73/2009) in respect of the land subject to the lease).
- (2) Where sub-paragraph (1) applies in relation to an obligation, a payment made in discharge of the obligation does not count as chargeable consideration.
- (3) The release of any such obligations as in mentioned in sub-paragraph (1) does not count as chargeable consideration in relation to the renunciation of the lease.

*Assignation of lease: assumption of obligations by assignee*

- 16 In the case of an assignation of a lease the assumption by the assignee of the obligation—
- (a) to pay rent, or
  - (b) to perform or observe any other undertaking of the tenant under the lease,
- does not count as chargeable consideration for the assignation.

*Loan or deposit in connection with grant or assignation of lease*

- 17 (1) Where, under arrangements made in connection with the grant of a lease—

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- (a) a tenant, or any person connected with or acting on behalf of the tenant, pays a deposit, or makes a loan, to any person, and
  - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the tenant or on the death of the tenant,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the grant of the lease.
- (2) Where, under arrangements made in connection with the assignment of a lease—
  - (a) the assignee, or any person connected with or acting on behalf of the assignee, pays a deposit, or makes a loan, to any person, and
  - (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee or on the death of the assignee,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Act to be consideration other than rent given for the assignment of the lease.
- (3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or (as the case requires) assignment of the lease is not more than twice the relevant maximum rent.
- (4) The relevant maximum rent is—
  - (a) in relation to the grant of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease,
  - (b) in relation to the assignment of a lease, the highest amount of rent payable in respect of any consecutive 12 month period during the term of the lease remaining outstanding as at the date of the assignment.
- (5) In determining the highest amount of rent for the purposes of sub-paragraph (4), take into account (if necessary) any amounts determined by virtue of paragraph 13(2) but disregard paragraph 24(2) (deemed reduction of rent, where further lease granted, for periods during which rents overlap).
- (6) Tax is not chargeable by virtue of this paragraph merely because of paragraph 9 (which excludes the nil rate tax band in cases where the relevant rent attributable to non-residential property is not less than £1,000 a year).

*Renunciation of existing lease in return for new lease*

- 18 (1) Where a lease is granted in consideration of the renunciation of an existing lease between the same parties—
  - (a) the grant of the new lease does not count as chargeable consideration for the renunciation, and
  - (b) the renunciation does not count as chargeable consideration for the grant of the new lease.
- (2) Paragraph 5 (exchanges) of schedule 2 (chargeable consideration) does not apply in such a case.

## PART 6

### OTHER PROVISION ABOUT LEASES

#### *Meaning of lease for a fixed term*

- 19 In the application of this schedule to a lease for a fixed term, no account is to be taken of—
- (a) any contingency as a result of which the lease may terminate before the end of the fixed term, or
  - (b) any right of either party to terminate the lease or renew it.

#### *Leases that continue after a fixed term*

- 20 (1) This paragraph applies to—
- (a) a lease for a fixed term and thereafter until terminated, or
  - (b) a lease for a fixed term that may continue beyond the fixed term by operation of law.
- (2) For the purposes of this Act (except section 30 (notifiable transactions)), a lease to which this paragraph applies is treated—
- (a) in the first instance as if it were a lease for the original fixed term and no longer,
  - (b) if the lease continues after the end of that term, as if it were a lease for a fixed term of 1 year longer than the original fixed term,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), as if it were a lease for a fixed term 2 years longer than the original fixed term,
- and so on.
- (3) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (2) in relation to the continuation of the lease for a period (or further period) of 1 year after the end of a fixed term is that the transaction becomes notifiable—
- (a) the buyer must make a return in respect of that transaction before the end of the period of 30 days beginning with the day after the end of that 1 year period,
  - (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
  - (c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (4) Sub-paragraph (3) is subject to paragraph 21.
- (5) For the purposes of section 30 (notifiable transactions), a lease to which this paragraph applies is a lease for its original fixed term.
- (6) Where—
- (a) a lease would be treated as continuing for a period (or further period) of 1 year under sub-paragraph (2), but



- (b) (ignoring that sub-paragraph) the lease actually terminates at a time during that period,  
the lease is to be treated as continuing under sub-paragraph (2) only until that time; and the references in sub-paragraph (3) to that 1 year period are accordingly to be read as references to so much of that year as ends with that time.

*Leases that continue after a fixed term: grant of new lease*

- 21 (1) This paragraph applies where—
- (a) (ignoring this paragraph) paragraph 20 would apply to treat a lease (“the original lease”) as if it were a lease for a fixed term 1 year longer than the original term,
  - (b) during that 1 year period the tenant under that lease is granted a new lease of the same or substantially the same premises, and
  - (c) the term of the new lease begins during that 1 year period.
- (2) Paragraph 20 does not apply to treat the lease as continuing after the original fixed term.
- (3) The term of the new lease is treated for the purposes of this Act as beginning immediately after the original fixed term.
- (4) Any rent which, in the absence of this paragraph, would be payable under the original lease in respect of that 1 year period is to be treated as payable under the new lease.
- (5) Where the fixed term of a lease has previously been extended (on one or more occasions) under paragraph 20, this paragraph applies as if references to the original term were references to the fixed term as previously so extended.

*Treatment of leases for indefinite term*

- 22 (1) For the purposes of this Act (except section 30 (notifiable transactions))—
- (a) a lease for an indefinite term is treated in the first instance as if it were a lease for a fixed term of 1 year,
  - (b) if the lease continues after the end of the term resulting from the application of paragraph (a), it is treated as if it were a lease for a fixed term of 2 years,
  - (c) if the lease continues after the end of the term resulting from the application of paragraph (b), it is treated as if it were a lease for a fixed term of 3 years,
- and so on.
- (2) In a case where no land transaction return or any other return has been made in relation to the transaction, where the effect of sub-paragraph (1) in relation to the continuation of the lease after the end of a deemed fixed term is that the transaction becomes notifiable—
- (a) the buyer must make a return in respect of that transaction before the end of the period of 30 days after the end of that term,
  - (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
  - (c) the tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

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- (3) For the purposes of section 30 (notifiable transactions) a lease for an indefinite term is a lease for a term of less than 7 years.
- (4) References in this paragraph to a lease for an indefinite term include an interest or right terminable by a period of notice or by notice at any time.

*Treatment of successive linked leases*

- 23 (1) This paragraph applies where—
- (a) successive leases are granted or treated as granted (whether at the same time or at different times) of the same or substantially the same premises, and
  - (b) those grants are linked transactions.
- (2) This Act applies as if the series of leases were a single lease—
- (a) granted at the time of the grant of the first lease in the series,
  - (b) for a term equal to the aggregate of the terms of all the leases, and
  - (c) in consideration of the rent payable under all of the leases.
- (3) The grant of later leases in the series is accordingly disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).

*Rent for overlap period in case of grant of further lease*

- 24 (1) This paragraph applies where—
- (a) A renounces an existing lease to B (“the old lease”) and in consideration of that renunciation B grants a lease to A of the same or substantially the same premises (“the new lease”),
  - (b) on termination of a lease (“the head lease”) a sub-tenant is granted a lease (“the new lease”) of the same or substantially the same premises as those comprised in the tenant’s original lease (“the old lease”) in pursuance of a contractual entitlement arising in the event of the head lease being terminated, or
  - (c) a person who has guaranteed the obligations of a tenant under a lease that has been terminated (“the old lease”) is granted a lease of the same or substantially the same premises (“the new lease”) in pursuance of the guarantee.
- (2) For the purposes of this Act the rent payable under the new lease in respect of any period falling within the overlap period is treated as reduced by the amount of the rent that would have been payable in respect of that period under the old lease.
- (3) The overlap period is the period between the date of grant of the new lease and what would have been the end of the term of the old lease had it not been terminated.
- (4) The rent that would have been payable under the old lease is to be taken to be the amount taken into account in determining the tax chargeable in respect of the acquisition of the old lease.
- (5) This paragraph does not have effect so as to require the rent payable under the new lease to be treated as a negative amount.

*Agreement for lease substantially performed etc.*

- 25 (1) Where—
- (a) there is an agreement (including missives not constituting a lease) under which a lease is to be executed, and
  - (b) the agreement is substantially performed without a lease having been executed,
- the agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of the substantial performance.
- (2) The effective date of the transaction is when the agreement is substantially performed.
- (3) Where sub-paragraph (1) applies and at some later time a lease (“the actual lease”) is executed, this Act applies as if the notional lease were a lease granted—
- (a) on the date the agreement was substantially performed,
  - (b) for a term which begins with that date and ends at the end of the term of the actual lease, and
  - (c) in consideration of the total rent payable over that term and any other consideration given for the agreement or the actual lease.
- (4) Where sub-paragraph (3) applies the grant of the actual lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).
- (5) For the purposes of section 34—
- (a) the grant of the notional lease and the grant of the actual lease are linked (whether or not they would be linked by virtue of section 57),
  - (b) the tenant under the actual lease (rather than the tenant under the notional lease) is liable for any tax or additional tax payable in respect of the notional lease as a result of sub-paragraph (3), and
  - (c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the notional lease, as a reference to the tenant under the actual lease.
- (6) Where sub-paragraph (1) applies and the agreement is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that sub-paragraph is to be (to that extent) repaid by the Tax Authority.
- (7) That repayment must be claimed by amendment of the return made in respect of the agreement.
- (8) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the agreement.

*Missives of let followed by execution of formal lease*

- 26 (1) Where a lease is constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”), the first lease is treated as if it were a lease granted—
- (a) on the date the missives of let were concluded,

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- (b) for a term which begins with that date and ends at the end of the term of the second lease, and
  - (c) in consideration of the total rent payable over that term and any other consideration given for the first lease or the second lease.
- (2) Where sub-paragraph (1) applies the grant of the second lease is disregarded for the purposes of this Act except section 34 (return or further return in consequence of later linked transaction).
- (3) Section 63 (read with section 64) makes provision for the effective dates in relation to the first lease and the second lease.
- (4) For the purposes of section 34—
- (a) the grant of the first lease and the grant of the second lease are linked (whether or not they would be linked by virtue of section 57),
  - (b) the tenant under the second lease (rather than the tenant under the first lease) is liable for any tax or additional tax payable in respect of the first lease as a result of sub-paragraph (1), and
  - (c) the reference in section 34(2) to the “buyer in the earlier transaction” is to be read, in relation to the first lease, as a reference to the tenant under the second lease.
- (5) In this paragraph, references to the execution of a lease are to the execution of a lease that either is in conformity with, or relates to substantially the same premises and term as, the missives of let.

*Cases where assignment of lease treated as grant of lease*

- 27 (1) This paragraph applies where the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3).
- (2) The first assignment of the lease that is not exempt from charge by virtue of any of the provisions specified in sub-paragraph (3), and in relation to which the assignee does not acquire the lease as a bare trustee of the assignor, is treated for the purposes of this Act as if it were the grant of a lease by the assignor—
- (a) for a term equal to the unexpired term of the lease referred to in sub-paragraph (1), and
  - (b) on the same terms as those on which the assignee holds that lease after the assignment.
- (3) The provisions are—
- (a) schedule 3 (sale and leaseback relief),
  - (b) schedule 8 (relief for alternative finance investment bonds),
  - (c) schedule 10 (group relief),
  - (d) schedule 11 (reconstruction relief and acquisition relief),
  - (e) schedule 13 (charities relief),
  - (f) schedule 16 (public bodies relief).
- (4) This paragraph does not apply where the relief in question is group relief, reconstruction relief, acquisition relief or charities relief and is withdrawn as a result of a disqualifying event occurring before the effective date of the assignment.
- (5) For the purposes of sub-paragraph (4), “disqualifying event” means—

- (a) in relation to the withdrawal of group relief, the event falling within paragraphs 14 and 15 of schedule 10 (purchaser ceasing to be a member of the same group as the seller), as read with paragraphs 32 to 40 of that schedule,
- (b) in relation to the withdrawal of reconstruction relief or acquisition relief, the change in control of the acquiring company mentioned in paragraphs 13 and 14 of schedule 11 or, as the case may be, the event mentioned in paragraphs 22 to 24 or 25 to 28 of that schedule,
- (c) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraph 5 or 6 of schedule 13.

*Assignment of lease: responsibility of assignee for returns etc.*

- 28 (1) Where a lease is assigned, anything that but for the assignment would be required or authorised to be done by or in relation to the assignor under or by virtue of any provision mentioned in sub-paragraph (2) must, if the event giving rise to the adjustment or return occurs after the effective date of the assignment, be done instead by or in relation to the assignee.
- (2) The provisions are—
- (a) section 31 (return where contingency ceases or consideration ascertained),
  - (b) section 34 (return or further return in consequence of later linked transaction),
  - (c) paragraph 10 of this schedule (return on 3-yearly review),
  - (d) paragraph 11 of this schedule (return on assignment or termination of lease),
  - (e) paragraph 20 of this schedule (return or further return where lease for fixed term continues after end of term),
  - (f) paragraph 22 of this schedule (return or further return in relation to lease for indefinite term),
  - (g) paragraph 30 of this schedule (return where transaction becomes notifiable on variation of rent or term).
- (3) So far as necessary for giving effect to sub-paragraph (1) anything previously done by or in relation to the assignor is to be treated as if it had been done by or in relation to the assignee.
- (4) This paragraph does not apply if the assignment falls to be treated as the grant of a lease by the assignor (see paragraph 27).

*Reduction of rent or term or other variation of lease*

- 29 (1) Where a lease is varied so as to reduce the amount of the rent, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.
- (2) Where any consideration in money or money's worth (other than an increase in rent) is given by the tenant for any variation of a lease, other than a variation of the amount of the rent or of the term of the lease, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the tenant.
- (3) Where a lease is varied so as to reduce the term, the variation is treated for the purposes of this Act as an acquisition of a chargeable interest by the landlord.

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

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*Increase of rent or term: notification*

- 30 (1) This paragraph applies where, in relation to a land transaction in respect of a lease which was not notifiable under section 30 (notifiable transactions)—
- (a) the lease is varied so as to—
    - (i) extend its term, or
    - (ii) increase the amount of rent, and
  - (b) the effect of the variation is that the transaction would have been notifiable under section 30 had it been a lease for that term as so extended or for that rent as so increased (whether or not the effect of the variation is also that tax is payable in respect of the transaction where none was payable before).
- (2) Where this paragraph applies—
- (a) the buyer must make a return in respect of the transaction before the end of the period of 30 days beginning with the day after the relevant date,
  - (b) the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction, and
  - (c) any tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.
- (3) The “relevant date” is the date from which the variation takes effect.
- (4) For the purposes of section 30—
- (a) a lease to which sub-paragraph (1)(a)(i) applies is a lease for whatever is its term as so extended, and
  - (b) a lease to which sub-paragraph (1)(a)(ii) applies is a lease for whatever is its rent as so increased.

SCHEDULE 20

*(introduced by section 66)*

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

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

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<i>Expression</i>	<i>Interpretation provision</i>
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