

# Land and Buildings Transaction Tax (Scotland) Act 2013

2013 asp 11

## PART 2

### KEY CONCEPTS

## 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.

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*Status: This is the original version (as it was originally enacted).*

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- (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- (4) Where subsection (1) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection is to be (to that extent) repaid by the Tax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 assignment, subsale or other transaction includes the grant or assignment of an option.