

SCHEDULE 17 PARTNERSHIPS

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—

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- (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
 - (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.

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- (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—
 - (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.

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- (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
 - (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.