

## 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.

#### *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,

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“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,
  - (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),
- 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

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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

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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).

#### *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—

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- (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.