

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.

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.
- (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.

Status: This is the original version (as it was originally enacted).

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),
 - (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”),
 - (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—

Status: This is the original version (as it was originally enacted).

- (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.

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.