

SCHEDULE

Article 7

“SCHEDULE 10A

(introduced by section 27)

Sub-sale development relief

PART 1

Introductory

Overview of relief

1.—(1) This schedule provides for relief in the case of land transactions involving certain sub-sales.

(2) It is arranged as follows—

Part 2 provides for the relief and defines key terms and expressions,

Part 3 provides for withdrawal of the relief,

Part 4 makes provision for supplementary matters.

PART 2

The relief

General

2.—(1) Relief under this schedule may be claimed by the buyer (the “first buyer”) in a contract (the “first contract”) for the acquisition by that buyer of a chargeable interest under which the acquisition is to be completed by a conveyance if—

(a) there is a qualifying sub-sale, and

(b) the qualifying conditions are met.

(2) The reference in sub-paragraph (1) to a contract does not include a contract that is a sub-sale or an assignation of rights in relation to another contract.

Qualifying sub-sale

3. A sub-sale is a qualifying sub-sale if—

(a) it is a sub-sale under which—

(i) the first buyer contracts to sell the whole or part of the subject-matter of the first contract to another person (the “second buyer”), and

(ii) the second buyer becomes entitled to call for a conveyance to that person of the whole or part of the subject-matter of the first contract, and

(b) immediately before the first buyer entered into the sub-sale, the first buyer was entitled under the first contract to call for a conveyance of the whole or part of that subject-matter.

Qualifying conditions

4.—(1) The qualifying conditions are that—

- (a) the substantial performance or completion of the first contract takes place at the same time as, and in connection with, the substantial performance or completion of the qualifying sub-sale, and
- (b) significant development for commercial purposes of the subject-matter of the qualifying sub-sale will be completed within the relevant period.

(2) For the purposes of sub-paragraph (1)(a), an assignment, sub-sale or other transaction (relating to the whole or part of the subject-matter of the qualifying sub-sale), as a result of which a person other than the second buyer becomes entitled to call for a conveyance to that person, is not to be treated as substantial performance of the qualifying sub-sale.

(3) The “relevant period” is the period of 5 years from the date on which the first buyer entered into the qualifying sub-sale.

Subject-matter

5. References in this schedule to the “subject-matter” of a qualifying sub-sale are to the chargeable interest the conveyance of which the second buyer is entitled to call for as a result of the qualifying sub-sale.

6. References in this schedule to “part of the subject-matter” of the first contract are to a chargeable interest that is the same as the chargeable interest referred to in paragraph 2(1) except that it relates to part only of the land concerned.

Significant development

7. In this schedule—

“development”—

- (a) means the building, on the subject-matter of the qualifying sub-sale, of buildings including educational, sports and leisure, residential, retail, office or industrial buildings (but not agricultural buildings, mining or engineering works (other than wind farms) or plant and machinery), and
- (b) includes the redevelopment of such buildings, where the redevelopment works carried out are comparable in scale or cost to the construction of such buildings,

“significant development” means development that is significant having regard to, among other things, the nature and extent of the subject-matter of the qualifying sub-sale and to the market value of that subject-matter.

8. In paragraph 7—

“agricultural” is to be construed as meaning used for the purposes of the trade of agriculture, which includes horticulture, fruit growing, seed growing, dairy farming, livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes,

“building” has the meaning given in section 55 of the Building (Scotland) Act 2003(1),

“industrial building” includes a building built to be used for the purposes of a trade carried on in a factory, mill or laboratory, for the purposes of a dock undertaking, for the purposes

(1) 2003 asp. 8.

of the trade of hotel-keeping, or for the purposes of a trade which consists of the operation or management of an airport used solely or mainly by aircraft carrying passengers or cargo for hire or reward.

Full relief

9.—(1) Where the subject-matter of the qualifying sub-sale is the whole subject-matter of the first contract, the land transaction—

- (a) effected as mentioned in section 9(1) on completion of the first contract, or
- (b) treated as effected under section 10(1) on that contract being substantially performed,

is exempt from charge.

(2) The land transaction effected or treated as effected as mentioned in sub-paragraph (1) is “the first land transaction”.

Partial relief

10.—(1) Where the subject-matter of the qualifying sub-sale is part of the subject-matter of the first contract, the chargeable consideration for the first land transaction is taken to be the amount calculated by deducting from the amount that would otherwise be the chargeable consideration for that transaction were there no relief under this schedule, the amount of that consideration attributable to the part of the subject-matter of that transaction which is also the subject-matter of the qualifying sub-sale.

(2) “Attributable” means attributable on a just and reasonable basis.

Claiming the relief

11. Where the first buyer claims relief under this schedule, the return made in respect of the first land transaction must include such evidence as Revenue Scotland may specify as to the significant development for commercial purposes of the subject-matter of the qualifying sub-sale that will be completed within the relevant period.

12. Relief under this schedule may not be claimed if relief is claimed under schedule 7 (alternative property finance relief).

PART 3

Withdrawal of relief

Full withdrawal of relief

13. Relief under this schedule is withdrawn if no development of the subject-matter of the qualifying sub-sale takes place within the relevant period.

14. Where relief is withdrawn, the amount of tax chargeable in relation to the first land transaction is the amount that would have been chargeable in respect of that transaction but for the relief.

Partial withdrawal of relief

15.—(1) Relief under this schedule is partially withdrawn if—

- (a) the significant development proposed when the relief was given has not been completed within the relevant period, but
 - (b) some development of the subject-matter of the qualifying sub-sale has taken place within that period.
- (2) Where relief is partially withdrawn, the amount of tax chargeable in relation to the first land transaction is an appropriate proportion of the amount that would have been chargeable in respect of that transaction but for the relief.
- (3) An “appropriate proportion” means an appropriate proportion that is just and reasonable having regard to, among other things, the extent to which the significant development proposed when the relief was given has taken place.

PART 4

Supplementary

Disapplication of section 14

16. Where relief under this schedule is given, section 14(1)(c) is to be disregarded in so far as it relates to the entry into the qualifying sub-sale by the first buyer.

Qualifying sub-sale: consideration

- 17.** Where relief under this schedule is given the chargeable consideration for the qualifying sub-sale is—
- (a) so much of the consideration under the first land transaction as is referable to the subject-matter of the qualifying sub-sale and is to be given (directly or indirectly) by the second buyer or a person connected with the second buyer, and
 - (b) the consideration given for the qualifying sub-sale.”