

SCHEDULE

Regulation 2

Amendment of Part 4 of the Finance Act 2003

Stamp Duty Land Tax: anti-avoidance

1.—(1) After section 75 of the Finance Act 2003 (stamp duty land tax:crofting) insert—

“Anti-avoidance

75A.—(1) This section applies where—

- (a) one person (V) disposes of a chargeable interest and another person (P) acquires either it or a chargeable interest deriving from it,
- (b) a number of transactions are involved in connection with the disposal and acquisition (“the scheme transactions”), and
- (c) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than would be payable on a notional land transaction effecting the acquisition of V’s chargeable interest by P on its disposal by V.

(2) In subsection (1) “transaction” includes in particular—

- (a) a non-land transaction,
- (b) an agreement, offer or undertaking not to take specified action,
- (c) any kind of arrangement whether or not it could otherwise be described as a transaction, and
- (d) a transaction which takes place after the acquisition by P of the chargeable interest.

(3) The scheme transactions may include, for example—

- (a) the acquisition by P of a lease deriving from a freehold owned or formerly owned by V;
- (b) a sub-sale to a third person;
- (c) the grant of a lease to a third person subject to a right to terminate;
- (d) the exercise of a right to terminate a lease or to take some other action;
- (e) an agreement not to exercise a right to terminate a lease or to take some other action;
- (f) the variation of a right to terminate a lease or to take some other action,

(4) Where this section applies—

- (a) any of the scheme transactions which is a land transaction shall be disregarded for the purposes of this Part, but
- (b) there shall be a notional land transaction for the purposes of this Part effecting the acquisition of V’s chargeable interest by P on its disposal by V.

(5) The chargeable consideration on the notional land transaction mentioned in subsections (1)(c) and (4)(b) is the largest amount (or aggregate amount) given or received by or on behalf of any one person in respect of the scheme transactions.

(6) The effective date of the notional land transaction is—

- (a) the last date of completion for the scheme transactions, or
- (b) if earlier, the date on which a contract in respect of the scheme transactions is substantially performed.

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- (7) The notional transaction attracts any relief under this Part which it would attract if it were an actual transaction.
- (8) This section does not apply where subsection (1)(c) is satisfied only by reason of—
- (a) sections 71A(1) to 73, or
 - (b) a provision of Schedule 9.
- (9) For the purposes of this section an interest in a partnership is a chargeable interest in so far as it concerns land owned by the partnership.”.
- (2) This paragraph has effect in respect of disposals and acquisitions if—
- (a) the disposal mentioned in the new section 75A(1)(a) (inserted by sub-paragraph (1) above) takes place after the relevant time, and
 - (b) all the scheme transactions (within the meaning of the new section 75A(1)(b)) take place after that time.
- (3) This paragraph does not have effect in relation to—
- (a) any scheme transaction which is effected in pursuance of a contract entered into and substantially performed before the relevant time.
 - (b) any other scheme transaction which is effected in pursuance of a contract entered into before the relevant time and which is not an excluded transaction.
- (4) For this purpose, a scheme transaction effected in pursuance of a contract is an excluded transaction if—
- (a) at or after the relevant time the contract is varied in a way that significantly affects the scheme transaction (see sub-paragraph (5)),
 - (b) the subject-matter of the scheme transaction is not identified in the contract in a way that would have enabled its acquisition before the relevant time,
 - (c) rights under the contract are assigned at or after the relevant time,
 - (d) the scheme transaction is effected in consequence of the exercise, at or after the relevant time, of any option, right of pre-emption or similar right, or
 - (e) at or after the relevant time there is an assignment, sub-sale or other transaction (relating to the whole or part of the contract’s subject-matter) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.
- (5) For the purposes of sub-paragraph (4)(a) the contract is varied in a way that significantly affects the scheme transaction if (and only if)—
- (a) it is varied so as to substitute a different purchaser in relation to the scheme transaction,
 - (b) it is varied so as to alter the subject-matter of the scheme transaction, or
 - (c) it is varied so as to alter the consideration for the scheme transaction.

Stamp Duty Land Tax: partnerships

2.—(1) Schedule 15 to the Finance Act 2003 (stamp duty land tax: partnerships) is amended as follows.

(2) In Step Two of paragraph 12(1) (transfer to partnership: how to calculate the “sum of the lower proportions”)(2)—

(1) Section 71A was inserted by paragraph 2 of Schedule 8 to the Finance Act 2005 (c. 7).

(2) Part 3 of Schedule 15 (comprising paragraphs 9 to 38) was substituted by paragraph 1 of Schedule 41 to the Finance Act 2004 (c. 12).

- (a) in paragraph (b) for “or is connected with the relevant owner” substitute “or is an individual connected with the relevant owner”, and
- (b) at the end add—
 - “(If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.)”.
- (3) Omit paragraph 13 (transfer of partnership where all partners are companies).
- (4) In paragraph 14 (transfer of interest in property-investment partnership)—
 - (a) for sub-paragraph (1)(b) substitute—
 - “(b) either—
 - (i) the transferee is a person, other than an individual, connected with the transferor, or
 - (ii) consideration is given for the transfer,”
 - (b) at the end add—
 - “(9) An interest in respect of the transfer to which this paragraph applies shall be treated as a chargeable interest for the purposes of paragraph 3(1) of Schedule 7 to the extent that the relevant partnership property consists of a chargeable interest.”, and
 - (c) in the italic cross-heading omit “for consideration”.
- (5) In Step Two of paragraph 20(1) (transfer from partnership: how to calculate the “sum of the lower proportions”)—
 - (a) in paragraph (b) for “or was connected with the relevant owner” substitute “or was an individual connected with the relevant owner”, and
 - (b) at the end add—
 - “(If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.)”.
- (6) After paragraph 27 (application of group relief) insert—
 - “**27A.**—(1) This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 12)—
 - (a) a company (“the connected company”) would have been a corresponding partner of a relevant owner (“the original owner”) but for the fact that paragraph (b) of Step Two includes connected persons only if they are individuals, and
 - (b) the connected company and the original owner are members of the same group.
 - (2) The charge in respect of the transaction shall be reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purposes of calculating the sum of the lower proportions.
 - (3) The provisions of Part 1 of Schedule 7 apply to group relief under sub-paragraph (2) above as to group relief under paragraph 1(1) of Schedule 7 but—
 - (a) with the omission of paragraph 2(2)(a),
 - (b) with the substitution for “the purchaser” in paragraph 3(1)(a) of “a partner who was, at the effective date of the transaction, a partner and a member of the same group as the transferor (“the relevant partner”); and
 - (c) with the other modifications specified in paragraph 27(3) to (6) above.”.
- (7) This paragraph has effect in relation to any land transaction of which the effective date is, or is after, 6th December 2006 (but see sub-paragraph (8)).

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- (8) This paragraph does not have effect in relation to—
- (a) any land transaction which is effected in pursuance of a contract entered into and substantially performed before the relevant time, or
 - (b) any other land transaction which is effected in pursuance of a contract entered into before the relevant time and which is not an excluded transaction.
- (9) For this purpose, a land transaction effected in pursuance of a contract is an excluded transaction if—
- (a) at or after the relevant time the contract is varied in a way that significantly affects the land transaction (see sub-paragraph (10)),
 - (b) the subject-matter of the land transaction is not identified in the contract in a way that would have enabled its acquisition before the relevant time,
 - (c) rights under the contract are assigned at or after the relevant time,
 - (d) the land transaction is effected in consequence of the exercise, at or after the relevant time, of any option, right of pre-emption or similar right, or
 - (e) at or after the relevant time there is an assignment, sub-sale or other transaction (relating to the whole or part of the contract's subject-matter) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.
- (10) For the purposes of sub-section (9)(a) the contract is varied in a way that significantly affects the land transaction if (and only if)—
- (a) it is varied so as to substitute a different purchaser in relation to the land transaction,
 - (b) it is varied so as to alter the subject-matter of the land transaction, or
 - (c) it is varied so as to alter the consideration for the land transaction.