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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 41. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 41

Section 304

#### STAMP DUTY LAND TAX: APPLICATION TO CERTAIN PARTNERSHIP TRANSACTIONS

- 1 In Schedule 15 to the Finance Act 2003 (c. 14) (stamp duty land tax: partnerships), for Part 3 (transactions excluded from stamp duty land tax) substitute—

#### “PART 3

#### TRANSACTIONS TO WHICH SPECIAL PROVISIONS APPLY

##### Introduction

- 9 (1) This Part of this Schedule applies to certain transactions involving—
- (a) the transfer of a chargeable interest to a partnership (paragraph 10),
  - (b) the transfer of an interest in a partnership (paragraphs 14, 17, 31 and 32), or
  - (c) the transfer of a chargeable interest from a partnership (paragraph 18).
- (2) References in this Part of this Schedule to the transfer of a chargeable interest include—
- (a) the grant or creation of a chargeable interest,
  - (b) the variation of a chargeable interest, and
  - (c) the surrender, release or renunciation of a chargeable interest.

##### Transfer of chargeable interest to a partnership: general

- 10 (1) This paragraph applies where—
- (a) a partner transfers a chargeable interest to the partnership, or
  - (b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership, or
  - (c) a person connected with—
    - (i) a partner, or
    - (ii) a person who becomes a partner as a result of or in connection with the transfer,transfers a chargeable interest to the partnership.

It applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

- (2) The chargeable consideration for the transaction shall (subject to paragraph 13) be taken to be equal to—

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$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual consideration for the transaction.

- (3) The relevant chargeable proportion in relation to the market value of the interest transferred is—

$$(100 - SLP)\%$$

where SLP is the sum of the lower proportions.

- (4) The relevant chargeable proportion in relation to the actual consideration for the transaction is—

$$SLP\%$$

where SLP is the sum of the lower proportions.

- (5) Paragraph 12 provides for determining the sum of the lower proportions.
- (6) Paragraph 11 applies (instead of sub-paragraphs (2) to (5)) if the whole or part of the chargeable consideration for the transaction is rent.
- (7) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to a transaction to which this paragraph applies, but the responsible partners are—
- (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

**Transfer of chargeable interest to a partnership: chargeable consideration including rent**

- 11 (1) This paragraph applies in relation to a transaction to which paragraph 10 applies where the whole or part of the chargeable consideration for the transaction is rent.
- (2) Schedule 5 provides for the calculation of the tax chargeable in respect of the transaction, subject to the following provisions of this paragraph.
- (3) Paragraph 2 of Schedule 5 (calculation of tax chargeable in respect of rent) has effect as if—
- (a) for “the net present value of the rent payable over the term of the lease” there were substituted “ the relevant chargeable

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proportion of the net present value of the rent payable over the term of the lease”, and

- (b) for “the net present values of the rent payable over the terms of all the leases” there were substituted “ the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases ”.

- (4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual chargeable consideration other than rent.

- (5) If there is no chargeable consideration other than rent—
- (a) there shall (despite that) be taken to be chargeable consideration other than rent (in particular for the purposes of paragraph 9 of Schedule 5), and
- (b) that chargeable consideration shall be taken to be equal to—

$$RCP \times MV$$

where—

RCP is the relevant chargeable proportion, and

MV is the market value of the interest transferred.

- (6) The relevant chargeable proportion in relation to—
- (a) the net present value of the rent payable over the term of a lease, or
- (b) the market value of the interest transferred,
- is—

$$(100 - SLP)\%$$

where SLP is the sum of the lower proportions.

- (7) The relevant chargeable proportion in relation to the actual consideration other than rent is—

$$SLP\%$$

where SLP is the sum of the lower proportions.

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- (8) Paragraph 12 provides for determining the sum of the lower proportions.
- (9) This paragraph is subject to paragraph 13.

**Transfer of chargeable interest to a partnership: sum of the lower proportions**

- 12 (1) The sum of the lower proportions in relation to a transaction to which paragraph 10 applies is determined as follows:—

*Step One*

Identify the relevant owner or owners.

A person is a relevant owner if—

- (a) immediately before the transaction, he was entitled to a proportion of the chargeable interest, and
- (b) immediately after the transaction, he is a partner or connected with a partner.

*Step Two*

For each relevant owner, identify the corresponding partner or partners.

A person is a corresponding partner in relation to a relevant owner if, immediately after the transaction—

- (a) he is a partner, and
- (b) he is the relevant owner or is connected with the relevant owner.

*Step Three*

For each relevant owner, find the proportion of the chargeable interest to which he was entitled immediately before the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

*Step Four*

Find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners.

The lower proportion is—

- (a) the proportion of the chargeable interest attributable to the partner, or
- (b) if lower, the partner's partnership share immediately after the transaction.

The proportion of the chargeable interest attributable to the partner is—

- (i) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (at Step Three) in respect of that owner;
- (ii) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to him (at Step Three) in respect of each of those owners.

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### *Step Five*

Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the sum of the lower proportions.

- (2) For the purposes of this paragraph persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) shall be taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

### **Transfer of chargeable interest to a partnership consisting wholly of bodies corporate**

- 13 (1) This paragraph applies where—
- (a) there is a transaction to which paragraph 10 applies;
  - (b) immediately after the transaction all the partners are bodies corporate;
  - (c) the sum of the lower proportions is 75 or more.
- (2) Paragraphs 10 and 11 have effect with these modifications.
- (3) In paragraph 10, for sub-paragraphs (2) to (5) substitute—
- “(2) The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred.”.
- (4) In paragraph 10(6), for “sub-paragraphs (2) to (5)” substitute “ sub-paragraph (2) ”.
- (5) In paragraph 11, omit sub-paragraphs (3) and (6) to (8).
- (6) In paragraph 11, for sub-paragraph (4) substitute—
- “(4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (7) In paragraph 11, for sub-paragraph (5)(b) substitute—
- “(b) that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (8) Paragraph 12 provides for determining the sum of the lower proportions.

### **Transfer of partnership interest: consideration given and chargeable interest held**

- 14 (1) This paragraph applies where—
- (a) there is a transfer of an interest in a partnership,
  - (b) consideration is given for the transfer, and
  - (c) the relevant partnership property includes a chargeable interest.
- (2) The transfer—

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- (a) shall be taken for the purposes of this Part to be a land transaction;
  - (b) is a chargeable transaction.
- (3) The purchaser under 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) Consideration is regarded as given for the transfer—
- (a) in a case within paragraph 36(a), if consideration in money or money’s worth is given by or on behalf of the person acquiring the interest;
  - (b) in a case within paragraph 36(b), if there is a withdrawal of money or money’s worth from the partnership by the person reducing his interest or ceasing to be a partner.
- (5) The “relevant partnership property”, in relation to a transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—
- (a) any interest that was transferred to the partnership in connection with the transfer;
  - (b) a lease to which paragraph 15 (exclusion of market rent leases) applies.
- (6) The chargeable consideration for the transaction shall be taken to be equal to a proportion of the market value of the relevant partnership property.
- (7) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.

#### **Exclusion of market rent leases**

- 15 (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 14(5) 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.
- (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

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- (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.**

- 16 (1) Where paragraph 5 of Schedule 4 (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 shall 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 14(5).
- (3) The provisions of paragraph 6 of Schedule 4 (partition etc: disregard of existing interest) do not apply where this paragraph applies.

#### **Transfer of partnership interest pursuant to earlier arrangements**

- 17 (1) This paragraph applies where—
  - (a) there is a transfer of a chargeable interest to a partnership (“the land transfer”);
  - (b) the land transfer falls within paragraph (a), (b) or (c) of paragraph 10(1);
  - (c) there is subsequently a transfer of an interest in the partnership (“the partnership transfer”);
  - (d) the partnership transfer is made—
    - (i) if the land transfer falls within paragraph 10(1)(a) or (b), by the person who makes the land transfer;
    - (ii) if the land transfer falls within paragraph 10(1)(c), by the partner concerned;
  - (e) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer;
  - (f) the partnership transfer is not (apart from this paragraph) a chargeable transaction.
- (2) The partnership transfer—
  - (a) shall be taken for the purposes of this Part to be a land transaction;
  - (b) is a chargeable transaction.

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- (3) The partners shall be taken to be the purchasers under the transaction.
- (4) The chargeable consideration for the transaction shall be taken to be equal to a proportion of the market value, as at the date of the transaction, of the interest transferred by the land transfer.
- (5) That proportion is—
  - (a) if the person making the partnership transfer is not a partner immediately after the transfer, his partnership share immediately before the transfer;
  - (b) if he is a partner immediately after the transfer, the difference between his partnership share before and after the transfer.
- (6) The partnership transfer and the land transfer shall be taken to be linked transactions.
- (7) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to the partnership transfer, but the responsible partners are—
  - (a) those who were partners immediately before the transfer and who remain partners after the transfer, and
  - (b) any person becoming a partner as a result of, or in connection with, the transfer.

**Transfer of chargeable interest from a partnership: general**

- 18 (1) This paragraph applies where a chargeable interest is transferred—
- (a) from a partnership to a person who is or has been one of the partners, or
  - (b) from a partnership to a person connected with a person who is or has been one of the partners.
- (2) The chargeable consideration for the transaction shall (subject to paragraph 24) be taken to be equal to—

$$(RCP \times MV) + (RCP \times AC)$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual consideration for the transaction.

- (3) The relevant chargeable proportion in relation to the market value of the interest transferred is—

$$(100 - SLP)\%$$

where SLP is the sum of the lower proportions.



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- (4) The relevant chargeable proportion in relation to the actual consideration for the transaction is—

$$\text{SLP} \%$$

where SLP is the sum of the lower proportions.

- (5) Paragraph 20 provides for determining the sum of the lower proportions.
- (6) Paragraph 19 applies (instead of sub-paragraphs (2) to (5)) if the whole or part of the chargeable consideration for the transaction is rent.
- (7) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist shall be treated as remaining partnership property until it is distributed.

**Transfer of chargeable interest from a partnership: chargeable consideration including rent**

- 19 (1) This paragraph applies in relation to a transaction to which paragraph 18 applies where the whole or part of the chargeable consideration for the transaction is rent.
- (2) Schedule 5 provides for the calculation of the tax chargeable in respect of the transaction, subject to the following provisions of this paragraph.
- (3) Paragraph 2 of Schedule 5 (calculation of tax chargeable in respect of rent) has effect as if—
- (a) for “the net present value of the rent payable over the term of the lease” there were substituted “ the relevant chargeable proportion of the net present value of the rent payable over the term of the lease ”, and
  - (b) for “the net present values of the rent payable over the terms of all the leases” there were substituted “ the relevant chargeable proportions of the net present values of the rent payable over the terms of all the leases ”.
- (4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to—

$$(\text{RCP} \times \text{MV}) + (\text{RCP} \times \text{AC})$$

where—

RCP is the relevant chargeable proportion,

MV is the market value of the interest transferred, and

AC is the actual chargeable consideration other than rent.

- (5) If there is no chargeable consideration other than rent—

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- (a) there shall (despite that) be taken to be chargeable consideration other than rent (in particular for the purposes of paragraph 9 of Schedule 5), and
- (b) that chargeable consideration shall be taken to be equal to—

$$\text{RCP} \times \text{MV}$$

where—

RCP is the relevant chargeable proportion, and

MV is the market value of the interest transferred.

- (6) The relevant chargeable proportion in relation to—
  - (a) the net present value of the rent payable over the term of a lease, or
  - (b) the market value of the interest transferred,
 is—

$$(100 - \text{SLP})\%$$

where SLP is the sum of the lower proportions.

- (7) The relevant chargeable proportion in relation to the actual consideration other than rent is—

$$\text{SLP}\%$$

where SLP is the sum of the lower proportions.

- (8) Paragraph 20 provides for determining the sum of the lower proportions.
- (9) This paragraph is subject to paragraph 24.

**Transfer of chargeable interest from a partnership: sum of the lower proportions**

- 20 (1) The sum of the lower proportions in relation to a transaction to which paragraph 18 applies is determined as follows:—

*Step One*

Identify the relevant owner or owners.

A person is a relevant owner if—

- (a) immediately after the transaction, he is entitled to a proportion of the chargeable interest, and
- (b) immediately before the transaction, he was a partner or connected with a partner.

*Step Two*

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For each relevant owner, identify the corresponding partner or partners.

A person is a corresponding partner in relation to a relevant owner if, immediately before the transaction—

- (a) he was a partner, and
- (b) he was the relevant owner or was connected with the relevant owner.

#### *Step Three*

For each relevant owner, find the proportion of the chargeable interest to which he is entitled immediately after the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners.

#### *Step Four*

Find the lower proportion for each person who is a corresponding partner in relation to one or more relevant owners.

The lower proportion is—

- (a) the proportion of the chargeable interest attributable to the partner, or
- (b) if lower, the partnership share attributable to the partner.

The proportion of the chargeable interest attributable to the partner is—

- (i) if he is a corresponding partner in relation to only one relevant owner, the proportion (if any) of the chargeable interest apportioned to him (at Step Three) in respect of that owner;
- (ii) if he is a corresponding partner in relation to more than one relevant owner, the sum of the proportions (if any) of the chargeable interest apportioned to him (at Step Three) in respect of each of those owners.

Paragraph 21 provides for determining the partnership share attributable to the partner.

#### *Step Five*

Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the sum of the lower proportions.

- (2) For the purposes of this paragraph persons who are entitled to a chargeable interest as beneficial joint tenants (or, in Scotland, as joint owners) shall be taken to be entitled to the chargeable interest as beneficial tenants in common (or, in Scotland, as owners in common) in equal shares.

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### **Transfer of chargeable interest from a partnership: partnership share attributable to partner**

- 21 (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 20 (1) (see Step Four).
- (2) Paragraph 22 applies for determining the partnership share attributable to a partner where—
- (a) the effective date of the transfer of the relevant chargeable interest to the partnership was before 20th October 2003, or
  - (b) the effective date of the transfer of the relevant chargeable interest to the partnership was on or after that date and—
    - (i) the instrument by which the transfer was effected has been duly stamped with *ad valorem* stamp duty, or
    - (ii) any tax payable in respect of the transfer has been duly paid under this Part.
- (3) Where the effective date of the transfer of the relevant chargeable interest to the partnership was on or after 20th October 2003 but neither of the conditions in sub-paragraphs (i) and (ii) of sub-paragraph (2)(b) is met, the partnership share attributable to the partner is zero.
- (4) The relevant chargeable interest is—
- (a) the chargeable interest which ceases to be partnership property as a result of the transaction to which paragraph 18 applies, or
  - (b) where the transaction to which paragraph 18 applies is the grant or creation of a chargeable interest, the chargeable interest out of which that interest is granted or created.
- 22 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows:—

#### *Step One*

Find the partner's actual partnership share on the relevant date.

In a case falling within paragraph 21(2)(a), the relevant date—

- (a) if the partner was a partner on 19th October 2003, is that date;
- (b) if the partner became a partner after that date, is the date on which he became a partner.

In a case falling within paragraph 21(2)(b), the relevant date—

- (a) if the partner was a partner on the effective date of the transfer of the relevant chargeable interest to the partnership, is that date;
- (b) if the partner became a partner after that date, is the date on which he became a partner.

#### *Step Two*

Add to that partnership share any increases in the partner's partnership share which—

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- (a) occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 18 applies, and
- (b) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if—

- (i) where the transfer which resulted in the increase took place on or before the date on which the Finance Act 2004 was passed, the instrument by which the transfer was effected has been duly stamped with *ad valorem* stamp duty under the enactments relating to stamp duty;
- (ii) where the transfer which resulted in the increase took place after that date, any tax payable in respect of the transfer has been duly paid under this Part.

#### *Step Three*

Deduct from the increased partnership share any decreases in the partner's partnership share which occur in the period starting on the day after the relevant date and ending immediately before the transaction to which paragraph 18 applies.

The result is the partnership share attributable to the partner.

- (2) If the effect of applying Step Three would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.
- (3) In a case falling within paragraph 21(2)(a), if the partner ceased to be a partner before 19th October 2003, the partnership share attributable to the partner is zero.
- (4) In a case falling within paragraph 21(2)(b), if the partner ceased to be a partner before the effective date of the transfer of the relevant chargeable interest to the partnership, the partnership share attributable to the partner is zero.
- (5) Paragraph 21(4) (relevant chargeable interest) applies for the purposes of this paragraph.

### **Transfer of chargeable interest from a partnership to a partnership**

- 23
- (1) This paragraph applies where—
    - (a) there is a transfer of a chargeable interest from a partnership to a partnership, and
    - (b) the transfer is both—
      - (i) a transaction to which paragraph 10 applies, and
      - (ii) a transaction to which paragraph 18 applies.
  - (2) Where none of the chargeable consideration for the transaction is rent—
    - (a) paragraphs 10(2) to (5) and 18(2) to (5) do not apply;

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- (b) the chargeable consideration for the transaction shall be taken to be what it would have been if paragraph 10(2) to (5) had applied or, if greater, what it would have been if paragraph 18(2) to (5) had applied.
- (3) Where the whole or part of the chargeable consideration for the transaction is rent—
  - (a) paragraphs 11 and 19 do not apply;
  - (b) the chargeable consideration for the transaction shall be taken to be what it would have been if paragraph 11 had applied or, if greater, what it would have been if paragraph 19 had applied.

**Transfer of chargeable interest from a partnership consisting wholly of bodies corporate**

- 24 (1) This paragraph applies where—
- (a) there is a transaction to which paragraph 18 applies;
  - (b) immediately before the transaction all the partners are bodies corporate;
  - (c) the sum of the lower proportions is 75 or more.
- (2) Paragraphs 18, 19 and 23 have effect with these modifications.
- (3) In paragraph 18, for sub-paragraphs (2) to (5) substitute—
- “(2) The chargeable consideration for the transaction shall be taken to be equal to the market value of the interest transferred.”.
- (4) In paragraph 18(6), for “sub-paragraphs (2) to (5)” substitute “ sub-paragraph (2) ”.
- (5) In paragraph 19, omit sub-paragraphs (3) and (6) to (8).
- (6) In paragraph 19, for sub-paragraph (4) substitute—
- “(4) If there is chargeable consideration other than rent, that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (7) In paragraph 19, for sub-paragraph (5)(b) substitute—
- “(b) that chargeable consideration shall be taken to be equal to the market value of the interest transferred.”.
- (8) In paragraph 23(2)—
- (a) for “paragraphs 10(2) to (5) and 18(2) to (5)” substitute “ paragraphs 10(2) and 18(2) ”;
  - (b) for “paragraph 10(2) to (5)” substitute “ paragraph 10(2) ”;
  - (c) for “paragraph 18(2) to (5)” substitute “ paragraph 18(2) ”.
- (9) Paragraph 20 provides for determining the sum of the lower proportions.

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### **Application of exemptions and reliefs**

- 25 (1) Where paragraph 10, 14, 17 or 18 applies, paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (2) But (subject to paragraphs 26 to 28) this Part of this Schedule has effect subject to any other provision affording exemption or relief from stamp duty land tax.

### **Application of disadvantaged areas relief**

- 26 (1) Schedule 6 (disadvantaged areas relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 with these modifications.
- (2) For paragraph 3 substitute—
- “3 (1) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15 if every chargeable interest comprising the relevant partnership property is a chargeable interest in relation to land that is wholly situated in a disadvantaged area.
- (2) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15 if the subject matter of the land transfer is a chargeable interest in relation to land that is wholly situated in a disadvantaged area.”.
- (3) In paragraph 5, for sub-paragraphs (2) to (4) substitute—
- “(2) If the relevant consideration does not exceed £150,000 the transaction is exempt from charge.”.
- (4) For paragraph 6 substitute—
- “6 (1) This paragraph applies where the land is partly non-residential property and partly residential property.
- (2) The non-residential proportion of the chargeable consideration for the transaction does not count as chargeable consideration.
- (3) The non-residential proportion is the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is non-residential property.
- (4) If the relevant consideration does not exceed £150,000, none of the residential proportion of the chargeable consideration counts as chargeable consideration.
- (5) The residential proportion is the proportion of the market value of the relevant property that, on a just and reasonable

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apportionment, is attributable to land that is residential property.”.

(5) For paragraph 7 substitute—

“7 (1) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15 if—

- (a) some (but not all) of the chargeable interests comprising the relevant partnership property are chargeable interests in relation to land that is wholly situated in a disadvantaged area, or
- (b) any chargeable interest comprised in the relevant partnership property is a chargeable interest in relation to land that is partly situated in a disadvantaged area and partly situated outside such an area.

(2) This Part of this Schedule applies to a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15 if the subject matter of the land transfer is a chargeable interest in relation to land that is partly situated in a disadvantaged area and partly situated outside such an area.

(3) In this Part—

- (a) references to the disadvantaged-area proportion are to the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land situated in a disadvantaged area;
- (b) references to the advantaged-area proportion are to the proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is situated outside a disadvantaged area.”.

(6) In paragraph 8, for “consideration attributable to the land situated in the disadvantaged area” substitute “ disadvantaged-area proportion of the chargeable consideration ”.

(7) In paragraph 9, for sub-paragraphs (2) to (4) substitute—

“(2) If the relevant consideration does not exceed £150,000 none of the disadvantaged-area proportion of the chargeable consideration counts as chargeable consideration.”.

(8) For paragraph 10 substitute—

“10 (1) This paragraph applies where the land situated in a disadvantaged area is partly non-residential property and partly residential property.

(2) The non-residential proportion of the disadvantaged-area proportion of the chargeable consideration for the transaction does not count as chargeable consideration.



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- (3) The non-residential proportion is the proportion of the disadvantaged-area proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is not residential property.
- (4) If the relevant consideration does not exceed £150,000, none of the residential proportion of the disadvantaged-area proportion of the chargeable consideration counts as chargeable consideration.
- (5) The residential proportion is the proportion of the disadvantaged-area proportion of the market value of the relevant property that, on a just and reasonable apportionment, is attributable to land that is residential property.”.
- (9) After paragraph 11 (1) insert—
- “(1A) In this Schedule—
- “the land transfer” means the transaction that is the land transfer for the purposes of paragraph 17 of Schedule 15;
- “the relevant partnership property” has the meaning given by paragraph 14(5) of Schedule 15;
- “the relevant property”—
- (a) in the case of a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 of Schedule 15, means the relevant partnership property;
- (b) in the case of a transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 of Schedule 15, means the subject matter of the land transfer.
- (1B) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Part 3 of Schedule 15 (see paragraph 36 of that Schedule).”.
- (10) Omit paragraphs 11(2) and 12.

### **Application of group relief**

- 27 (1) Part 1 of Schedule 7 (group relief) applies to—
- (a) a transaction to which paragraph 10 applies, and
- (b) a transaction that is a chargeable transaction by virtue of paragraph 17,
- with these modifications.
- (2) In paragraph 3(1)(a), for “the purchaser” substitute “ a partner who was a partner at the effective date of the relevant transaction (“the relevant partner”) ”.
- (3) In paragraph 3(1), for paragraph (b) substitute—

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- “(b) at the time the relevant partner ceases to be a member of the same group as the vendor (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—
    - (i) was acquired by or on behalf of the partnership under the relevant transaction, or
    - (ii) is derived from a chargeable interest so acquired,
 and has not subsequently been acquired at market value under a chargeable transaction for which group relief was available but was not claimed.”
- (4) In paragraph 3(3), for the words from “the transferee company” to the end substitute “ or on behalf of the partnership and to the proportion in which the relevant partner is entitled at the relevant time to share in the income profits of the partnership. ”.
- (5) In paragraph 3(4), omit the definition of “relevant associated company”.
- (6) In paragraphs 4 to 6, for “the purchaser” (wherever appearing) substitute “ the relevant partner ”.

#### **Application of charities relief**

- 28 (1) Schedule 8 (charities relief) applies to the transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 with these modifications.
- (2) In paragraph 1(1), for “A land transaction is exempt from charge if the purchaser is a charity” substitute “ A transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 14 or 17 of Schedule 15 is exempt from charge if the transferee is a charity ”.
- (3) In paragraph 1(2)—
  - (a) for “the purchaser must intend to hold the subject-matter of the transaction” substitute “ every chargeable interest held as partnership property immediately after the transfer must be held ”.
  - (b) in paragraphs (a) and (b) for “the purchaser” substitute “ the transferee ”.
- (4) In paragraph 1(3) for “the purchaser” substitute “ the transferee ”.
- (5) In paragraph 2(1), for paragraph (b) substitute—
  - “(b) at the time of the disqualifying event the partnership property includes a chargeable interest—
    - (i) that was held as partnership property immediately after the relevant transaction, or
    - (ii) that is derived from an interest held as partnership property at that time.”.
- (6) In paragraph 2(3)(a), for “the purchaser” substitute “ the transferee ”.

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- (7) In paragraph 2(3), for paragraph (b) substitute—
- “(b) any chargeable interest held as partnership property immediately after the relevant transaction, or any interest or right derived from it, being used or held otherwise than for qualifying charitable purposes.”.
- (8) For paragraph 2(4) substitute—
- “(4) In sub-paragraphs (1) and (2) an “appropriate proportion” means an appropriate proportion having regard to—
- (a) the chargeable interests held as partnership property immediately after the relevant transaction and the chargeable interests held as partnership property at the time of the disqualifying event, and
- (b) the extent to which any chargeable interest held as partnership property at that time becomes used or held for purposes other than qualifying charitable purposes.”.
- (9) After paragraph 2 insert—

*“Interpretation*

- 3 (1) There is a transfer of an interest in a partnership for the purposes of this Schedule if there is such a transfer for the purposes of Part 3 of Schedule 15 (see paragraph 36 of that Schedule).
- (2) Paragraph 34 (1) of Schedule 15 (meaning of references to partnership property) applies for the purposes of this Schedule as it applies for the purposes of Part 3 of that Schedule.”.

**Acquisition of interest in partnership not chargeable except as specially provided**

- 29 Except as provided by—
- (a) paragraph 10 (transfer of chargeable interest to a partnership), or
- (b) paragraph 14 (transfer of partnership interest: consideration given and chargeable interest held), or
- (c) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements),

the acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land.

**Transactions that are not notifiable**

- 30 (1) A transaction which is a chargeable transaction by virtue of paragraph 14 or 17 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the zero rate threshold.
- (2) The consideration for a transaction exceeds the zero rate threshold if either or both of the following conditions are met—

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- (a) the relevant consideration for the purposes of section 55 (amount of tax chargeable: general) is such that the rate of tax chargeable under that section is 1% or higher;
- (b) the relevant rental value for the purposes of Schedule 5 (amount of tax chargeable: rent) is such that the rate of tax chargeable under that Schedule is 1% or higher.

#### **Stamp duty on transfers of partnership interests: continued application**

- 31 (1) Nothing in section 125 (abolition of stamp duty except in relation to stock or marketable securities), or in Part 2 of Schedule 20 (amendments and repeals consequential on that section), affects the application of the enactments relating to stamp duty in relation to an instrument by which a transfer of an interest in a partnership is effected.
- (2) In Part 1 of Schedule 20 (provisions supplementing section 125) references to stock or marketable securities shall be read as including any property that is the subject-matter of a transaction by which an interest in a partnership is transferred.
- (3) In their application in relation to an instrument by which a transfer of an interest in a partnership is effected, the enactments relating to stamp duty have effect subject to paragraphs 32 and 33.

#### **Stamp duty on transfers of partnership interests: modification**

- 32 (1) This paragraph applies where—
- (a) stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is chargeable on an instrument effecting a transfer of an interest in a partnership, and
  - (b) the relevant partnership property includes a chargeable interest.
- (2) The “relevant partnership property”, in relation to a transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than any interest that was transferred to the partnership in connection with the transfer.
- (3) The consideration for the transaction shall (subject to sub-paragraph (8)) be taken to be equal to the actual consideration for the transaction less the excluded amount.
- (4) The excluded amount is a proportion of the net market value of the relevant partnership property immediately after the transfer.
- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.
- (6) The net market value of a chargeable interest at a particular date is—

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## MV – SL

where—

MV is the market value of the chargeable interest at that date, and

SL is the amount outstanding at that date on any loan secured solely on the chargeable interest.

- (7) If, in relation to a chargeable interest, SL is greater than MV, the net market value of the chargeable interest shall be taken to be nil.
  - (8) If the excluded amount is greater than the actual consideration for the transaction, the consideration for the transaction shall be taken to be nil.
  - (9) Where this paragraph applies in relation to an instrument, the instrument shall not be regarded as duly stamped unless it has been stamped in accordance with section 12 of the Stamp Act 1891.
- 33 (1) This paragraph applies where—
- (a) stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is chargeable on an instrument effecting a transfer of an interest in a partnership, and
  - (b) the relevant partnership property includes stock or marketable securities.
- (2) The relevant partnership property, in relation to a transfer of an interest in a partnership, is the partnership property immediately after the transfer, other than any partnership property that was transferred to the partnership in connection with the transfer.
- (3) The stamp duty chargeable on the instrument shall not exceed the stamp duty that would be chargeable if—
- (a) the instrument were an instrument effecting a transfer of the stock and marketable securities comprised in the relevant partnership property, and
  - (b) the consideration for the transfer were equal to the net market value of that stock and those securities immediately after the transfer, less the excluded amount.
- (4) The excluded amount is a proportion of the net market value of that stock and those securities immediately after the transfer.
- (5) That proportion is—
- (a) if the person acquiring the interest in the partnership was not a partner before the transfer, his partnership share immediately after the transfer;
  - (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer.
- (6) The net market value of stock or securities at a particular date is—

## MV – SL

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 41. (See end of Document for details)*

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where—

MV is the market value of the stock or securities at that date, and

SL is the amount outstanding at that date on any loan secured solely on the stock or securities.

- (7) If, in relation to any stock or securities, SL is greater than MV, the net market value of the stock or securities shall be taken to be nil.
- (8) Where this paragraph applies in relation to an instrument, the instrument shall not be regarded as duly stamped unless it has been stamped in accordance with section 12 of the Stamp Act 1891.
- (9) This paragraph shall be construed as one with the Stamp Act 1891.

**Interpretation: partnership property and partnership share**

- 34 (1) Any reference in this Part of this Schedule to partnership property is to an interest or right held by or on behalf of a partnership, or the members of a partnership, for the purposes of the partnership business.
- (2) Any reference in this Part of this Schedule to a person's partnership share at any time is to the proportion in which he is entitled at that time to share in the income profits of the partnership.

**Interpretation: transfer of chargeable interest to a partnership**

- 35 For the purposes of this Part of this Schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

**Interpretation: transfer of interest in a partnership**

- 36 For the purposes of this Part of this Schedule, there is a transfer of an interest in a partnership where arrangements are entered into under which—
  - (a) a partner transfers the whole or part of his interest as partner to another person (who may be an existing partner), or
  - (b) a person becomes a partner and an existing partner reduces his interest in the partnership or ceases to be a partner.

**Interpretation: transfer of chargeable interest from a partnership**

- 37 For the purposes of this Part of this Schedule, there is a transfer of a chargeable interest from a partnership in any case where—
  - (a) a chargeable interest that was partnership property ceases to be partnership property, or
  - (b) a chargeable interest is granted or created out of partnership property and the interest is not partnership property.

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### **Interpretation: market value of leases**

- 38 (1) This paragraph applies in relation to a lease for the purposes of this Part of this Schedule if—
- (a) the grant of the lease is or was a transaction to which paragraph 10 applies or applied (or a transaction to which paragraph 10 would have applied if that paragraph had been in force at the time of the grant), or
  - (b) the grant of the lease is a transaction to which paragraph 18 applies.
- (2) In determining the market value of the lease, an obligation of the tenant under the lease is to be taken into account if (but only if)—
- (a) it is an obligation such as is mentioned in paragraph 10 (1) of Schedule 17A, or
  - (b) it is an obligation to make a payment to a person.

### **Interpretation: connected persons**

- 39 (1) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this Part of this Schedule.
- (2) As applied by sub-paragraph (1), that section has effect with the omission of subsection (4) (partners connected with each other).

### **Interpretation: arrangements**

- 40 In this Part of this Schedule “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”.
- 2 The following amendments are consequential on the amendment made by paragraph 1—
- (a) in section 104(2) of the Finance Act 2003 (c. 14) (partnerships), for the words following “Part 3” substitute “ makes special provision for certain transactions ”;
  - (b) in section 125(8) of that Act (continued application of stamp duty in relation to certain partnership transactions), for “paragraph 13(2) and (3)” substitute “ paragraph 31 ”;
  - (c) in paragraph 5 of Schedule 15 to that Act (partnerships: introduction to Part 2 of Schedule 15), for the words following “Part 3 of this Schedule” substitute “ (transactions to which special provisions apply) ”.
- 3 (1) The preceding provisions of this Schedule have effect in relation to any partnership transaction of which the effective date (within the meaning of Part 4 of the Finance Act 2003 (c. 14)) is after the day on which this Act is passed.
- (2) “Partnership transaction” means a transaction mentioned in paragraph 9 (1) of Schedule 15 to the Finance Act 2003 (as substituted by paragraph 1 of this Schedule).

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 41.