

*Status: Point in time view as at 01/04/2003.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 36. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 36

Section 115(7)

#### STAMP DUTY: CONTRACTS CHARGEABLE AS CONVEYANCES: SUPPLEMENTARY PROVISIONS

#### PART 1

#### SUBSALES

##### *Introduction*

- 1 This Part of this Schedule has effect for affording relief from duty under section 115 (contracts chargeable as conveyances) on a subsale.

##### *Meaning of “subsale”*

- 2 For the purposes of this Schedule there is a subsale—
- (a) where the purchaser under a contract or agreement for the sale of an estate or interest in land in the United Kingdom (“the original sale”), without having obtained a conveyance of the property contracted to be sold, contracts to sell the whole or part of the property to another person, or
  - (b) where the sub-purchaser under a subsale of an estate or interest in land in the United Kingdom, without having obtained a conveyance of the property contracted to be sold, contracts to sell to another person the whole or part of the property contracted to be sold by the original sale,
- so as to entitle that person to call for a conveyance from the original seller.

##### *Relief where duty paid on original sale or earlier subsale*

- 3 (1) Where duty under section 115 has been paid—
- (a) on the original sale, or
  - (b) on an intervening subsale,
- duty under that section on a subsale, or subsequent subsale, is chargeable only in respect of the amount (if any) by which the chargeable consideration on that transaction exceeds the chargeable consideration on the earlier transaction.
- (2) If there is more than one such earlier transaction on which duty has been paid, the reference in sub-paragraph (1) to the chargeable consideration on the earlier transaction shall be read as a reference to the higher or highest amount of chargeable consideration on which duty has been paid.
- (3) If the subsale does not relate to the whole of the property to which the earlier transaction related, the references in sub-paragraphs (1) and (2) to the chargeable consideration on an earlier transaction shall be read as references to an appropriate proportion of that consideration.

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- (4) What is an appropriate proportion shall be determined on a just and reasonable basis having regard to the subject matter of the subsale and of the earlier transaction.
- (5) For the purposes of this paragraph the chargeable consideration on a transaction is the consideration that falls to be brought into account in determining the duty chargeable on it.
- (6) Where under this paragraph duty on a subsale is chargeable in respect of part only of the consideration for the subsale, it is chargeable at the rate that would be applicable if the whole of the chargeable consideration on the subsale were taken into account.

## PART 2

### SUBSEQUENT CONVEYANCE OR TRANSFER

#### *Introduction*

- 4 (1) This Part of this Schedule has effect for affording relief where *ad valorem* duty is chargeable both—
  - (a) under section 115 on a contract or agreement (“the original sale”), and
  - (b) on a subsequent conveyance or transfer by the original seller to the purchaser, or a sub-purchaser, in conformity with that contract or agreement.
- (2) References in this Part to the purchaser under the original sale, or a sub-purchaser under a subsale, include a person by whom the rights of the purchaser, or a sub-purchaser, are exercisable by virtue of any assignment (in Scotland, assignation) or agreement (other than a subsale).

#### *Conveyance or transfer of property contracted to be sold*

- 5 (1) Where the original seller conveys the whole of the property contracted to be sold—
  - (a) to the purchaser, or
  - (b) to a sub-purchaser in circumstances in which section 58(4) of the Stamp Act 1891 (c. 39) applies (conveyance chargeable only on consideration moving from sub-purchaser),

the conveyance or transfer is chargeable with duty only to the extent (if any) that the *ad valorem* duty chargeable on it (apart from this sub-paragraph) exceeds the duty paid under section 115 on the original sale together with the amount of any such duty paid on an intervening subsale.
- (2) Where—
  - (a) the original seller conveys the property contracted to be sold to different sub-purchasers in parts or parcels, and
  - (b) section 58(5) of the Stamp Act 1891 (c. 39) applies (conveyance chargeable only on consideration moving from sub-purchaser),

the conveyance or transfer of each part or parcel is chargeable with duty only to the extent (if any) that the *ad valorem* duty chargeable on it (apart from this sub-paragraph) exceeds an appropriate proportion of the *ad valorem* duty paid on the original sale together with an appropriate proportion of any such duty paid on an intervening subsale.

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- (3) What is an appropriate proportion shall be determined on a just and reasonable basis having regard to the subject matter of the conveyance or transfer and of the earlier transaction.
- (4) Where sub-paragraph (1) or (2) applies to reduce or extinguish the duty payable on a conveyance or transfer, the Commissioners shall, upon application and upon production of the earlier instrument or instruments, duly stamped, either—
- (a) denote the payment of the whole of the *ad valorem* duty upon the conveyance or transfer, or
  - (b) transfer to the conveyance or transfer the *ad valorem* duty paid on the earlier instrument or instruments.

#### *Repayment of duty in certain cases*

- 6 (1) Where—
- (a) duty is paid under section 115 on the original sale,
  - (b) one or more conveyances or transfers are executed in conformity with that contract or agreement so that the whole of the property contracted to be sold is duly conveyed to a purchaser or to one or more sub-purchasers,
  - (c) those conveyances or transfers are all duly stamped, and
  - (d) the aggregate amount of the duty that would have been paid on those conveyances or transfers but for duty having been previously paid on the original sale is less than the duty paid on the original sale,
- the Commissioners shall repay the difference to the person by whom the duty was paid on the original sale.
- (2) If duty has been paid under section 115 on one or more intervening subsales, sub-paragraph (1) has effect with the following modifications—
- (a) the reference to duty having been paid on the original sale shall be read as a reference to duty having been paid either on the original sale or on an intervening subsale;
  - (b) the reference to the amount of duty paid on the original sale shall be read as a reference to the aggregate of the amounts paid on the original sale and any intervening subsales, and
  - (c) any repayment shall be apportioned among the persons by whom those amounts were paid.
- (3) The apportionment mentioned in sub-paragraph (2)(c) shall be made on a just and reasonable basis having regard to the subject matter of the original sale and of the subsale or subsales in question.

### **PART 3**

#### GENERAL SUPPLEMENTARY PROVISIONS

#### *Construction of references to duty on transactions*

- 7 Any reference in section 115 or this Schedule to duty chargeable or paid on a transaction is to duty chargeable or paid on the stamping of the instrument by which the transaction is effected.

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*Transactions relating to land in the UK and to other property*

- 8 (1) Where a transaction relates both to land in the United Kingdom and to other property, section 115 and this Schedule apply as if there were separate transactions.
- (2) Similarly, the reference in section 115(1)(b) to a series of transactions is to a series of transactions so far as relating to land in the United Kingdom.
- (3) If, in a case where a transaction or series of transactions relates partly to land in the United Kingdom and partly to other property, the consideration is not apportioned in a manner that is just and reasonable, section 115 and this Schedule shall have effect as if the consideration had been apportioned in such a manner.

*Person claiming relief to establish entitlement*

- 9 It is for a person claiming any relief under this Schedule to prove to the satisfaction of the Commissioners that he is entitled to relief and in what amount.

*Construction as one*

- 10 Section 115 and this Schedule shall be construed as one with the Stamp Act 1891 (c. 39).

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