

*Status: Point in time view as at 22/07/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004,  
Cross Heading: Contract and conveyance: effect of transfer of rights. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 39

#### STAMP DUTY LAND TAX AND STAMP DUTY

#### PART 1

##### AMENDMENTS TO PART 4 OF THE FINANCE ACT 2003: GENERAL

##### *Contract and conveyance: effect of transfer of rights*

- 5 (1) Section 45 (contract and conveyance: effect of transfer of rights) is amended as follows.
- (2) In subsection (1)—
- (a) after paragraph (b) insert “, and
  - (c) paragraph 12B of Schedule 17A (assignment of agreement for lease) does not apply.”;
  - (b) at the end insert “, and references to the transferor and the transferee shall be read accordingly ”.
- (3) For subsection (5) substitute—
- “(5) Where a transfer of rights relates to part only of the subject-matter of the original contract (“the relevant part”)—
- (a) subsection (8)(b) of section 44 (restriction of charge to tax on subsequent conveyance) has effect as if the reference to the amount of tax chargeable on that contract were a reference to an appropriate proportion of that amount, and
  - (b) a reference in the second sentence of subsection (3) above to the original contract, or a reference in subsection (4) above to the secondary contract arising from an earlier transfer of rights, is to that contract so far as relating to the relevant part (and that contract so far as not relating to the relevant part shall be treated as a separate contract).”.
- (4) After that subsection insert—
- “(5A) In relation to a land transaction treated as taking place by virtue of subsection (3)—
- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to the vendor under the original contract;
  - (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either the vendor under the original contract or the transferor.”.
- (5) After section 45 insert—

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### **“45A Contract providing for conveyance to third party: effect of transfer of rights**

- (1) This section applies where—
- (a) a contract (“the original contract”) is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B)—
    - (i) to a person (C) who is not a party to the contract, or
    - (ii) either to such a person or to B,
 and
  - (b) there is an assignment or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person (D) becomes entitled to exercise any of B’s rights under the original contract in place of B.

References in the following provisions of this section to a transfer of rights are to any such assignment or other transaction.

- (2) D is not regarded as entering into a land transaction by reason of the transfer of rights, but section 44A (contract providing for conveyance to third party) has effect in accordance with the following provisions of this section.
- (3) That section applies as if—
- (a) D had entered into a contract (a “secondary contract”) in the same terms as the original contract except with D as a party instead of B, and
  - (b) the consideration due from D under the secondary contract were—
    - (i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by D or a person connected with him, and
    - (ii) the consideration given for the transfer of rights.
- (4) The substantial performance of the original contract shall be disregarded if—
- (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract, or
  - (b) it occurs after the transfer of rights.
- (5) Where there are successive transfers of rights, subsection (3) has effect in relation to each of them.
- (6) The substantial performance of the secondary contract arising from an earlier transfer of rights shall be disregarded if—
- (a) it occurs at the same time as, and in connection with, the substantial performance of the secondary contract arising from a subsequent transfer of rights, or
  - (b) it occurs after that subsequent transfer.
- (7) Where a transfer of rights relates to only part of the subject matter of the original contract, or to only some of the rights under that contract—
- (a) a reference in subsection (3)(a) or (4) to the original contract, or a reference in subsection (6) to the secondary contract arising from an

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- earlier transfer, is to that contract so far as relating to that part or those rights, and
- (b) that contract so far as not relating to that part or those rights shall be treated as a separate contract.
- (8) The effective date of a land transaction treated as entered into by virtue of subsection (3) is not earlier than the date of the transfer of rights.
- (9) In relation to a such a transaction—
- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to A;
- (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either A or B.
- (10) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (3)(b).
- (11) In this section “contract” includes any agreement.”.
- (6) In section 122 (index of defined expressions), in the entry for “vendor” insert at the end “ (see too sections 45(5A) and 45A(9)) ”.

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