

Status: Point in time view as at 01/12/2009.

Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2005, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Section 49

STAMP DUTY LAND TAX: MISCELLANEOUS AMENDMENTS

PART 1

AMENDMENTS COMING INTO FORCE IN ACCORDANCE WITH PARAGRAPH 16

Introduction

- 1 Part 4 of FA 2003 (stamp duty land tax) is amended in accordance with this Part of this Schedule.

Transfer of rights: exclusion of transaction to which alternative finance provisions apply

- 2 In section 45 (contract and conveyance: effect of transfer of rights) at the end of subsection (3) insert “ except in a case where the secondary contract gives rise to a transaction that is exempt from charge by virtue of subsection (3) of section 73 (alternative property finance: land sold to financial institution and re-sold to individual) ”.

Group relief

- 3 In paragraph 1 of Schedule 7 (group relief), in sub-paragraph (7) for “paragraph 3” substitute “ paragraphs 3 and 4A ”.

- 4 In paragraph 3 of Schedule 7 (withdrawal of group relief)—

- (a) for sub-paragraph (2) substitute—

“(2) The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for group relief if the chargeable consideration for that transaction had been an amount equal to—

- (a) the market value of the subject-matter of the transaction, and

(b) if the acquisition was the grant of a lease at a rent, that rent, or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.”, and

- (b) at the end of sub-paragraph (5) insert “ and paragraph 4A (withdrawal of group relief in certain cases involving successive transactions) ”.

- 5 In paragraph 4 of Schedule 7 (cases in which group relief is not withdrawn)—

- (a) in sub-paragraph (3), for paragraph (b) substitute—

“(b) another company that—

- (i) is above the vendor in the group structure, and

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- (ii) as a result of the transaction ceases to be a member of the same group as the purchaser.”, and
- (b) in sub-paragraph (5), for “this purpose” substitute “ the purposes of sub-paragraphs (3) and (4) ”.

6 After paragraph 4 of Schedule 7 insert—

“Withdrawal of group relief in certain cases involving successive transactions

- 4A (1) Where, in the case of a transaction (“the relevant transaction”) that is exempt from charge by virtue of paragraph 1 (group relief)—
- (a) there is a change in the control of the purchaser,
 - (b) that change occurs—
 - (i) before the end of the period of three years beginning with the effective date of the relevant transaction, or
 - (ii) in pursuance of, or in connection with, arrangements made before the end of that period,
 - (c) apart from this paragraph, group relief in relation to the relevant transaction would not be withdrawn under paragraph 3, and
 - (d) any previous transaction falls within sub-paragraph (2),
- paragraphs 3 and 4 have effect in relation to the relevant transaction as if the vendor in relation to the earliest previous transaction falling within sub-paragraph (2) were the vendor in relation to the relevant transaction.
- (2) A previous transaction falls within this sub-paragraph if—
- (a) the previous transaction is exempt from charge by virtue of paragraph 1, 7 or 8,
 - (b) the effective date of the previous transaction is less than three years before the date of the event falling within sub-paragraph (1)(a),
 - (c) the chargeable interest acquired under the relevant transaction by the purchaser in relation to that transaction is the same as, comprises, forms part of, or is derived from, the chargeable interest acquired under the previous transaction by the purchaser in relation to the previous transaction, and
 - (d) since the previous transaction, the chargeable interest acquired under that transaction has not been acquired by any person under a transaction that is not exempt from charge by virtue of paragraph 1, 7 or 8.
- (3) For the purposes of sub-paragraph (1)(a) there is a change in the control of a company if—
- (a) any person who controls the company (alone or with others) ceases to do so,
 - (b) a person obtains control of the company (alone or with others), or
 - (c) the company is wound up.

References to “control” in this sub-paragraph shall be construed in accordance with section 416 of the Taxes Act 1988.

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(4) If two or more transactions effected at the same time are the earliest previous transactions falling within sub-paragraph (2), the reference in sub-paragraph (1) to the vendor in relation to the earliest previous transaction is a reference to the persons who are the vendors in relation to the earliest previous transactions.

(5) In this paragraph “arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.”

7 In Schedule 17A (further provisions relating to leases) in paragraph 11(5)(a) for the words from “the purchaser” to the end substitute “ the event falling within paragraph 3(1)(a) of Schedule 7 (purchaser ceasing to be a member of the same group as the vendor), as read with paragraph 4A of that Schedule ”.

Reconstruction and acquisition reliefs

8 In paragraph 8 of Schedule 7 (acquisition relief)—

(a) in sub-paragraph (1)(b) for “the first and second conditions” substitute “ all the conditions ”, and

(b) after sub-paragraph (5) insert—

“(5A) The third condition is that the undertaking or part acquired by the acquiring company has as its main activity the carrying on of a trade that does not consist wholly or mainly of dealing in chargeable interests.

In this sub-paragraph “trade” has the same meaning as in the Taxes Act 1988.”

9 In paragraph 9 of Schedule 7 (withdrawal of reconstruction or acquisition relief) for sub-paragraph (2) substitute—

“(2) The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for reconstruction or acquisition relief if the chargeable consideration for that transaction had been an amount equal to—

(a) the market value of the subject-matter of the transaction, and

(b) if the acquisition was the grant of a lease at a rent, that rent,

or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.”

Withdrawal of money etc from partnership after transfer of chargeable interest

10 In Schedule 15 (partnerships) after paragraph 17 insert—

“Withdrawal of money etc from partnership after transfer of chargeable interest

17A (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);

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- (c) during the period of three years beginning with the date of the land transfer, a qualifying event occurs.
- (2) A qualifying event is—
- (a) a withdrawal from the partnership of money or money's worth which does not represent income profit by the relevant person—
- (i) withdrawing capital from his capital account,
 - (ii) reducing his interest, or
 - (iii) ceasing to be a partner, or
- (b) in a case where the relevant person has made a loan to the partnership—
- (i) the repayment (to any extent) by the partnership of the loan, or
 - (ii) a withdrawal by the relevant person from the partnership of money or money's worth which does not represent income profit.
- (3) For this purpose the relevant person is—
- (a) where the land transfer falls within paragraph 10(1)(a) or (b), the person who makes the land transfer, and
 - (b) where the land transfer falls within paragraph 10(1)(c), the partner concerned or a person connected with him.
- (4) The qualifying event—
- (a) shall be taken to be a land transaction, and
 - (b) is a chargeable transaction.
- (5) The partners shall be taken to be the purchasers under the transaction.
- (6) Paragraphs 6 to 8 (responsibility of partners) have effect in relation to the transaction.
- (7) The chargeable consideration for the transaction shall be taken to be—
- (a) in a case falling within sub-paragraph (2)(a), equal to the value of the money or money's worth withdrawn from the partnership,
 - (b) in a case falling within sub-paragraph (2)(b)(i), equal to the amount repaid, and
 - (c) in a case falling within sub-paragraph (2)(b)(ii), equal to so much of the value of the money or money's worth withdrawn from the partnership as does not exceed the amount of the loan, but (in any case) shall not exceed the market value, as at the effective date of the land transfer, of the chargeable interest transferred by the land transfer, reduced by any amount previously chargeable to tax.”

Grant of lease to bare trustee

11 For paragraph 3 of Schedule 16 substitute—

“Bare trustee

- 3 (1) Subject to sub-paragraph (2), where a person acquires a chargeable interest as bare trustee, this Part applies as if the interest were vested in,

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and the acts of the trustee in relation to it were the acts of, the person or persons for whom he is trustee.

(2) Sub-paragraph (1) does not apply in relation to the grant of a lease.

(3) Where a lease is granted to a person as bare trustee, he is treated for the purposes of this Part, as it applies in relation to the grant of the lease, as purchaser of the whole of the interest acquired.

(4) Where a lease is granted by a person as bare trustee, he is to be treated for the purposes of this Part, as it applies in relation to the grant of the lease, as vendor of the whole of the interest disposed of.”

12 In paragraph 11 of Schedule 17A (cases where assignment of lease treated as grant of lease), for sub-paragraph (1) substitute—

“(1) This paragraph applies where the grant of a lease is exempt from charge by virtue of any of the provisions specified in sub-paragraph (3).”

Variation of lease

13 In paragraph 15A of Schedule 17A (leases: reduction of rent or term)—

(a) after sub-paragraph (1) insert—

“(1A) Where any consideration in money or money's worth (other than an increase in rent) is given by the lessee for any variation of a lease, other than a variation of the amount of the rent or of the term of the lease, the variation is treated for the purposes of this Part as an acquisition of a chargeable interest by the lessee.”, and

(b) for the heading preceding that paragraph substitute “Reduction of rent or term or other variation of lease”.

Loan or deposit in connection with grant or assignment of lease

14 After paragraph 18 of Schedule 17A insert—

“Loan or deposit in connection with grant or assignment of lease

18A (1) Where, under arrangements made in connection with the grant of a lease—

(a) the lessee, or any person connected with him or acting on his behalf, pays a deposit, or makes a loan, to any person, and

(b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the lessee or on the death of the lessee,

the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Part to be consideration other than rent given for the grant of the lease.

(2) Where, under arrangements made in connection with the assignment of a lease—

(a) the assignee, or any person connected with him or acting on his behalf, pays a deposit, or makes a loan, to any person, and

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- (b) the repayment of all or part of the deposit or loan is contingent on anything done or omitted to be done by the assignee or on the death of the assignee,
the amount of the deposit or loan (disregarding any repayment) is to be taken for the purposes of this Part to be consideration other than rent given for the assignment of the lease.
- (3) Sub-paragraph (1) or (2) does not apply in relation to a deposit if the amount that would otherwise fall within the sub-paragraph in question in relation to the grant or (as the case requires) assignment of the lease is not more than twice the relevant maximum rent.
- (4) The relevant maximum rent is—
- (a) in relation to the grant of a lease, the highest amount of rent payable in respect of any consecutive twelve month period in the first five years of the term;
 - (b) in relation to the assignment of a lease, the highest amount of rent payable in respect of any consecutive twelve month period in the first five years of the term remaining outstanding as at the date of the assignment,
- the highest amount of rent being determined (in either case) in the same way as the highest amount of rent mentioned in paragraph 7(3).
- (5) Tax is not chargeable by virtue of this paragraph—
- (a) merely because of paragraph 9(2) of Schedule 5 (which excludes the 0% band in the Tables in section 55(2) in cases where the relevant rental figure exceeds £600 a year), or
 - (b) merely because of paragraph 5(4)(b), 6(6)(b), 9(4)(b) or 10(6)(b) of Schedule 6 (which make similar provision in relation to land which is wholly or partly residential property and is wholly or partly situated in a disadvantaged area).
- (6) Section 839 of the Taxes Act 1988 (connected persons) has effect for the purposes of this paragraph.”
- 15 In section 80 (adjustment where contingency ceases or consideration is ascertained) after subsection (4) insert—
- “(4A) Where the transaction (“the relevant transaction”) is the grant or assignment of a lease, no claim may be made under subsection (4)—
- (a) in respect of the repayment (in whole or part) of any loan or deposit that is treated by paragraph 18A of Schedule 17A as being consideration given for the relevant transaction, or
 - (b) in respect of the refund of any of the consideration given for the relevant transaction, in a case where the refund—
 - (i) is made under arrangements that were made in connection with the relevant transaction, and
 - (ii) is contingent on the determination or assignment of the lease or on the grant of a chargeable interest out of the lease.”

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Commencement

- 16 (1) Subject to sub-paragraph (7), paragraphs 3 to 7 have effect where the effective date of the relevant transaction (within the meaning of paragraph 3 or 4A of Schedule 7 to FA 2003) is after 19th May 2005.
- (2) Subject to sub-paragraph (7), paragraph 9 has effect where the effective date of the relevant transaction (within the meaning of paragraph 9 of Schedule 7 to FA 2003) is after 19th May 2005.
- (3) Subject to sub-paragraph (7), paragraph 10 has effect where the effective date of the transaction transferring the chargeable interest to the partnership is after 19th May 2005.
- (4) Subject to sub-paragraph (7), paragraphs 11 and 12 have effect where the effective date of the land transaction consisting of the grant of the lease is after 19th May 2005.
- (5) Subject to sub-paragraph (7), the amendments made by the other provisions of this Part of this Schedule have effect in relation to any transaction of which the effective date is after 19th May 2005.
- (6) In sub-paragraphs (7) and (8) “the specified date” means—
- (a) in relation to the amendments made by paragraphs 4(a) and 9, 19th May 2005, and
 - (b) in relation to the amendments made by the other provisions of this Part of this Schedule, 16th March 2005.
- (7) The amendments made by this Part of this Schedule do not have effect—
- (a) in relation to any transaction which is effected in pursuance of a contract entered into and substantially performed on or before the specified date, or
 - (b) subject to sub-paragraph (8), in relation to any other transaction which is effected in pursuance of a contract entered into on or before the specified date.
- (8) The exclusion by sub-paragraph (7)(b) of transactions effected in pursuance of contracts entered into on or before the specified date does not apply—
- (a) if there is any variation of the contract or assignment of rights under the contract after that date,
 - (b) if the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or
 - (c) if after that date there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.
- (9) In this paragraph “assignment”, “effective date” and “substantially performed” have the same meaning as in Part 4 of FA 2003.

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PART 2

AMENDMENTS COMING INTO FORCE IN ACCORDANCE WITH PARAGRAPH 22

Introduction

- 17 Part 4 of FA 2003 (stamp duty land tax) is amended in accordance with this Part of this Schedule.

Transfers involving public bodies

- 18 In section 66 of FA 2003 (transfers involving public bodies) after subsection (5) insert—

“(6) In this section “company” means a company as defined by section 735(1) of the Companies Act 1985 or Article 3(1) of the Companies (Northern Ireland) Order 1986.”

Group relief: avoidance arrangements

- 19 In paragraph 2 of Schedule 7 (restrictions on availability of group relief) after sub-paragraph (4) insert—

“(4A) Group relief is not available if the transaction—

- (a) is not effected for bona fide commercial reasons, or
- (b) forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

“Tax” here means stamp duty, income tax, corporation tax, capital gains tax or tax under this Part.”

Acquisition relief: avoidance arrangements

- 20 In paragraph 8 of Schedule 7 (acquisition relief)—

- (a) for sub-paragraph (5) substitute—

“(5) For this purpose companies are associated if one has control of the other or both are controlled by the same person or persons.

The reference to control shall be construed in accordance with section 416 of the Taxes Act 1988.”, and

- (b) after sub-paragraph (5A) (inserted by paragraph 8 of this Schedule) insert—

“(5B) The fourth condition is that the acquisition is effected for bona fide commercial reasons and does not form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.

“Tax” here means stamp duty, income tax, corporation tax, capital gains tax or tax under this Part.

(5C) In this paragraph “arrangements” include any scheme, agreement or understanding, whether or not legally enforceable.”

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Stamp duty on transfers of partnership interests

- 21 (1) In Schedule 15 (stamp duty land tax: partnerships), paragraph 33 (which relates to stamp duty on transfers of partnership interests) is amended as follows.
- (2) For sub-paragraphs (1) and (2) substitute—
- “(1) This paragraph applies where stamp duty under Part 1 of Schedule 13 to the Finance Act 1999 (transfer on sale) is, apart from this paragraph, chargeable on an instrument effecting a transfer of an interest in a partnership.
- (1A) If the relevant partnership property does not include any stock or marketable securities, no stamp duty shall (subject to sub-paragraph (8)) be chargeable on the instrument.”
- (3) In sub-paragraph (3)—
- (a) at the beginning insert “ If the relevant partnership property includes stock or marketable securities, ”,
- (b) in paragraph (a), for the words from “the stock” to “property” substitute “ that stock and those securities ”, and
- (c) for paragraph (b) substitute—
- “ (b) the consideration for the transfer were equal to the appropriate proportion of the net market value of that stock and those securities immediately after the transfer.”
- (4) After sub-paragraph (3) insert—
- “(3A) 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.”
- (5) Omit sub-paragraph (4).
- (6) In sub-paragraph (5), for “That” substitute “ The appropriate ”.

Commencement

- 22 (1) Subject to sub-paragraph (2), paragraphs 18 to 20 have effect in relation to any transaction of which the effective date is on or after the day on which this Act is passed.
- (2) Paragraphs 19 and 20 do not have effect—
- (a) in relation to any transaction which is effected in pursuance of a contract entered into and substantially performed on or before 16th March 2005, or
- (b) (subject to sub-paragraph (3)) in relation to any other transaction which is effected in pursuance of a contract entered into on or before that date.
- (3) The exclusion by sub-paragraph (2)(b) of transactions effected in pursuance of contracts entered into on or before 16th March 2005 does not apply—
- (a) if there is any variation of the contract or assignment of rights under the contract after that date,
- (b) if the transaction is effected in consequence of the exercise after that date of any option, right of pre-emption or similar right, or

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- (c) if after that date there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.
- (4) Paragraph 21 has effect in relation to any instrument executed on or after the day on which this Act is passed.
- (5) In this paragraph “assignment”, “effective date” and “substantially performed” have the same meaning as in Part 4 of FA 2003.

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