

Land and Buildings Transaction Tax (Scotland) Bill

[AS INTRODUCED]

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ACCOMPANYING DOCUMENTS

Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 19-EN. A Policy Memorandum is printed separately as SP Bill 19-PM.

Land and Buildings Transaction Tax (Scotland) Bill [AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

PART 1

LAND AND BUILDINGS TRANSACTION TAX

1 The tax

- 5 (1) A tax (to be known as land and buildings transaction tax) is to be charged on land transactions.
- (2) The tax is chargeable—
- 10 (a) whether or not there is an instrument effecting the transaction,
- (b) if there is such an instrument, whether or not it is executed in Scotland, and
- (c) whether or not any party to the transaction is present, or resident, in Scotland.
- (3) The tax is to be under the care and management of the Tax Authority.

2 Overview

This Act is arranged as follows—

Part 2 makes provision for the key concepts underlying the tax including—

- 15 (a) which transactions are land transactions,
- (b) which interests are, and which are not, chargeable interests in land,
- (c) when a chargeable interest is acquired and the treatment of transactions involving contracts which require to be completed by conveyance as well as other kinds of transaction,
- 20 (d) which land transactions are, and which are not, chargeable transactions,
- (e) what is, and what is not, chargeable consideration in relation to a chargeable transaction,

Part 3 makes provision for—

- (a) the amount of tax payable,
- (b) relief from the tax, and
- (c) who is liable to pay the tax,

Part 4 provides for land transaction returns and for the payment of the tax,

Part 5 contains provision about the application of the Act in relation to certain types of buyer, including companies, partnerships and trusts,

Part 6 contains general provision, including provisions about the Tax Authority and definitions of expressions used in the Act,

Part 7 contains provisions on subordinate legislation powers and commencement as well as other final provisions.

PART 2

KEY CONCEPTS

CHAPTER 1

LAND TRANSACTIONS AND CHARGEABLE INTERESTS

Land transaction

3 Land transaction

A land transaction is the acquisition of a chargeable interest.

Chargeable interest

4 Chargeable interest

- (1) A chargeable interest is an interest of a kind mentioned in subsection (2) which is not an exempt interest.
- (2) The interests are—
 - (a) an interest, right or power in or over land in Scotland, or
 - (b) the benefit of an obligation, restriction or condition affecting the value of any such interest, right or power.
- (3) In subsection (2), “land in Scotland” does not include land below mean low water mark.

5 Exempt interest

- (1) An interest is exempt if it is a security interest.
- (2) In subsection (1) a “security interest” means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.
- (3) See also paragraphs 21 to 24 of schedule 7 (which make additional provision about exempt interests in relation to alternative property finance arrangements).
- (4) The Scottish Ministers may, by regulations, modify this section so as to—
 - (a) provide that a description of an interest or right in relation to land is an exempt interest,

- (b) provide that a description of an interest or right in relation to land is no longer to be an exempt interest,
- (c) vary a description of an exempt interest.

Acquisition and disposal of chargeable interest

6 Acquisition and disposal of chargeable interest

- (1) Each of the following is an acquisition and a disposal of a chargeable interest—
 - (a) the creation of the interest,
 - (b) the renunciation or release of the interest,
 - (c) the variation of the interest.
- (2) A person acquires a chargeable interest where—
 - (a) the person becomes entitled to the interest on its creation,
 - (b) the person's interest or right is benefitted or enlarged by the renunciation or release of the interest, or
 - (c) the person benefits from the variation of the interest.
- (3) A person disposes of a chargeable interest where—
 - (a) the person's interest or right becomes subject to the interest on its creation,
 - (b) the person ceases to be entitled to the interest on its being renounced or released, or
 - (c) the person's interest or right is subject to or limited by the variation of the interest.
- (4) Except as otherwise provided, this Act applies however the acquisition is effected, whether by act of the parties, by order of the court or other authority, by or under any enactment or by operation of law.

7 Buyer and seller

- (1) The buyer, in relation to a land transaction, is the person who acquires the subject-matter of the transaction.
- (2) But a person is treated as the buyer only where that person has given consideration for, or is a party to, the transaction.
- (3) The seller, in relation to a land transaction, is the person who disposes of the subject-matter of the transaction.

CHAPTER 2

PROVISION ABOUT PARTICULAR TRANSACTIONS

General rules for contracts requiring conveyance

8 Contract and conveyance

- (1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.

- (2) A person is not regarded as entering into a land transaction by reason of entering into the contract.
- (3) But see sections 9 and 10.

9 Completion without substantial performance

- (1) If the transaction is completed without previously having been substantially performed, the contract and the transaction effected on completion are treated as parts of a single land transaction.
- (2) In this case the effective date of the transaction is the date of completion.

10 Substantial performance without completion

- (1) If the contract is substantially performed without having been completed, the contract is treated as if it were itself the transaction provided for in the contract.
- (2) In this case the effective date of the transaction is when the contract is substantially performed.
- (3) Where subsection (1) applies and the contract is subsequently completed by a conveyance—
 - (a) both the contract and the transaction effected on completion are notifiable transactions, and
 - (b) tax is chargeable on the latter transaction to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the contract.
- (4) Where subsection (1) applies and the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of that subsection is to be (to that extent) repaid by the Tax Authority.
- (5) That repayment must be claimed by amendment of the land transaction return made in respect of the contract.

Contract providing for conveyance to third party

11 Contract providing for conveyance to third party

- (1) This section applies where a 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)—
 - (a) to a person (C) who is not a party to the contract, or
 - (b) either to C or to B.
- (2) B is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.
- (3) If the contract is substantially performed, B is treated for the purposes of this Act as acquiring a chargeable interest, and accordingly as entering into a land transaction.
- (4) In such a case, the effective date of the transaction is when the contract is substantially performed.

- (5) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) is to be (to that extent) repaid by the Tax Authority.
- (6) Repayment must be claimed by amendment of the land transaction return made in respect of the contract.
- (7) Subject to subsection (8), sections 8 to 10 do not apply in relation to the contract.
- (8) Where—
- (a) this subsection applies by virtue of subsection (1)(b), and
 - (b) by reason of B's direction or request, A becomes obliged to convey a chargeable interest to B,
- sections 8 to 10 apply to that obligation as they apply to a contract for a land transaction that is to be completed by a conveyance.
- (9) Sections 8 to 10 apply in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1), that is to be completed by a conveyance.
- (10) References to completion in sections 8 to 10, as they apply by virtue of subsection (9), include references to conveyance by A to C of the subject-matter of the contract between B and C.

Options etc.

12 Options and rights of pre-emption

- (1) The acquisition of—
- (a) an option binding the grantor to enter into a land transaction, or
 - (b) a right of pre-emption preventing the grantor from entering into, or restricting the right of the grantor to enter into, a land transaction,
- is a land transaction distinct from any land transaction resulting from the exercise of the option or right.
- (2) They may be linked transactions (see section 56).
- (3) The reference in subsection (1)(a) to an option binding the grantor to enter into a land transaction includes an option requiring the grantor either to enter into a land transaction or to discharge the grantor's obligations under the option in some other way.
- (4) The effective date of the transaction in the case of the acquisition of an option or right such as is mentioned in subsection (1) is when the option or right is acquired (as opposed to when it becomes exercisable).
- (5) Nothing in this section applies to so much of an option or right of pre-emption as constitutes or forms part of a land transaction apart from this section.

Exchanges

13 Exchanges

- (1) Where a land transaction is entered into by a person as buyer (alone or jointly) wholly or partly in consideration of another land transaction being entered into by that person (alone or jointly) as seller, this Act applies in relation to each transaction as if each were distinct and separate from the other (and they are not linked transactions within the meaning of section 56).
- (2) A transaction is treated for the purposes of this Act as entered into by a person as buyer wholly or partly in consideration of another land transaction being entered into by that person as seller in any case where an obligation to give consideration for a land transaction that a person enters into as buyer is met wholly or partly by way of that person entering into another transaction as seller.
- (3) As to the amount of the chargeable consideration in the case of exchanges and similar transactions, see—
 - (a) paragraphs 5 and 6 of schedule 2,
 - (b) paragraph 17 of that schedule.

Interpretation

14 Meaning of “substantial performance”

- (1) A contract is substantially performed when—
 - (a) the buyer, or a person connected with the buyer, takes possession of the whole, or substantially the whole, of the subject-matter of the contract,
 - (b) a substantial amount of the consideration is paid or provided, or
 - (c) there is an assignation, 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 original buyer becomes entitled to call for a conveyance to that person.
- (2) For the purpose of subsection (1)(a)—
 - (a) possession includes receipt of rent or the right to receive it, and
 - (b) it is immaterial whether possession is taken under the contract or under a licence.
- (3) For the purposes of subsection (1)(b), a substantial amount of the consideration is paid or provided—
 - (a) if none of the consideration is rent, where the whole or substantially the whole of the consideration is paid or provided,
 - (b) if the only consideration is rent, when the first payment of rent is made,
 - (c) if the consideration includes both rent and other consideration, when—
 - (i) the whole or substantially the whole of the consideration other than rent is paid or provided, or
 - (ii) the first payment of rent is made.
- (4) For the purposes of subsection (1)(c) the reference to an assignation, subsale or other transaction includes the grant or assignation of an option.

CHAPTER 3

CHARGEABLE TRANSACTIONS AND CHARGEABLE CONSIDERATION

Chargeable transaction

15 Chargeable transaction

A land transaction is a chargeable transaction unless it is—

- (a) an exempt transaction, or
- (b) otherwise exempt from charge.

16 Exempt transaction

A transaction is exempt if schedule 1 provides that it is so exempt.

Chargeable consideration

17 Chargeable consideration

- (1) Schedule 2 makes provision as to the chargeable consideration for a transaction.
- (2) The Scottish Ministers may, by regulations, modify this Act relating to chargeable consideration and make such other provision as they consider appropriate about—
 - (a) what is to be treated as chargeable consideration,
 - (b) the determination of the amount or value of chargeable consideration.

Contingent, uncertain or unascertained consideration

18 Contingent consideration

- (1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is contingent.
- (2) The amount or value of the consideration is to be determined on the assumption that the outcome of the contingency will be such that the consideration is payable or, as the case may be, does not cease to be payable.
- (3) In this Act, “contingent”, in relation to consideration, means—
 - (a) that it is to be paid or provided only if some uncertain future event occurs, or
 - (b) that it is to cease to be paid or provided if some uncertain future event occurs.

19 Uncertain or unascertained consideration

- (1) Subsection (2) applies where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained.
- (2) The amount or value of the consideration is to be determined on the basis of a reasonable estimate.
- (3) In this section, “uncertain”, in relation to consideration, means its amount or value depends on uncertain future events.

20 Contingent, uncertain or unascertained consideration: further provision

Sections 18 and 19 have effect subject to—

- (a) section 31 (return where contingency ceases or consideration ascertained),
- (b) section 32 (contingency ceases or consideration is ascertained: less tax payable),
and
- (c) section 41 (application to defer payment in case of contingent or uncertain consideration).

*Annuities etc.***21 Annuities etc.: chargeable consideration limited to 12 years' payments**

- (1) This section applies to so much of the chargeable consideration for a land transaction as consists of an annuity payable—
 - (a) for life,
 - (b) in perpetuity,
 - (c) for an indefinite period, or
 - (d) for a definite period exceeding 12 years.
- (2) The consideration to be taken into account is limited to 12 years' annual payments.
- (3) Where the amount payable varies, or may vary, from year to year, the 12 highest annual payments are to be taken into account.
- (4) No account is to be taken of any provision for adjustment of the amount payable in line with the retail price index, the consumer prices index or any other similar index.
- (5) References in this section to annual payments are to payments in respect of each successive period of 12 months beginning with the effective date of the transaction.
- (6) For the purposes of this section the amount or value of any payment is to be determined (if necessary) in accordance with section 18 (contingent consideration) or 19 (uncertain or unascertained consideration).
- (7) References in this section to an annuity include any consideration (other than rent) that falls to be paid or provided periodically.
- (8) References to payment are to be read accordingly.
- (9) Where this section applies—
 - (a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply, and
 - (b) no application may be made under section 41 (application to defer payment in case of contingent or uncertain consideration).

*Deemed market value***22 Deemed market value where transaction involves connected company**

- (1) This section applies where the buyer is a company and—

- (a) the seller is connected with the buyer, or
 - (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the seller is connected.
- (2) The chargeable consideration for the transaction is to be taken to be not less than—
 - (a) the market value of the subject-matter of the transaction as at the effective date of the transaction, and
 - (b) if the acquisition is the grant of a lease, the rent.
- (3) In this section—
 - “company” means a body corporate,
 - “shares” includes stock and the reference to shares in a company includes reference to securities issued by a company.
- (4) Where this section applies, paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply.
- (5) But this section has effect subject to any other provision affording exemption or relief from the tax.
- (6) This section is subject to the exceptions provided for in section 23.

23 Exceptions from deemed market value

- (1) Section 22 does not apply in the following cases.
- (2) In the following provisions “the company” means the company that is the buyer in relation to the transaction in question.
- (3) Case 1 is where immediately after the transaction the company holds the property as trustee in the course of a business carried on by it that consists of or includes the management of trusts.
- (4) Case 2 is where—
 - (a) immediately after the transaction the company holds the property as trustee, and
 - (b) the seller is connected with the company only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).
- (5) Case 3 is where—
 - (a) the seller is a company and the transaction is, or is part of, a distribution of the assets of that company (whether or not in connection with its winding up), and
 - (b) it is not the case that—
 - (i) the subject-matter of the transaction, or
 - (ii) an interest from which that interest is derived,has, within the period of 3 years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the seller.

PART 3

CALCULATION OF TAX AND RELIEFS

Amount of tax chargeable

24 Tax rates and tax bands

- (1) The Scottish Ministers must, by order, specify the tax bands and the percentage tax rates for each band—
 - (a) for residential property transactions, and
 - (b) for non-residential property transactions.
- (2) An order under subsection (1) must specify, in the case of each type of transaction—
 - (a) a nil rate tax band and at least two other tax bands,
 - (b) the tax rate for the nil rate tax band, which must be 0%, and
 - (c) the tax rate for each tax band above the nil rate tax band so that the rate for each band is higher than the rate for the band below it.
- (3) A transaction is a residential property transaction if—
 - (a) the main subject-matter of the transaction consists entirely of an interest in land that is residential property, or
 - (b) where the transaction is one of a number of linked transactions, the main subject-matter of each transaction consists entirely of such an interest.
- (4) A transaction is a non-residential property transaction if—
 - (a) the main subject-matter of the transaction consists of or includes an interest in land that is not residential property, or
 - (b) where the transaction is one of a number of linked transactions, the main subject-matter of any transaction consists of or includes such an interest.

25 Amount of tax chargeable

- (1) The amount of tax chargeable in respect of a chargeable transaction is to be determined as follows.

Step 1

For each tax band applicable to the type of transaction, multiply so much of the chargeable consideration for the transaction as falls within the band by the tax rate for that band.

Step 2

Calculate the sum of the amounts reached under Step 1.

The result is the amount of tax chargeable.

- (2) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to section 55 (application of this Act to leases).
- (3) This section is subject to—
 - (a) schedule 5 (multiple dwellings relief),
 - (b) schedule 9 (crofting community right to buy relief),

(c) Part 3 of schedule 11 (acquisition relief).

26 Amount of tax chargeable: linked transactions

- (1) Where a chargeable transaction is one of a number of linked transactions, the amount of tax chargeable in respect of the transaction is to be determined as follows.

Step 1

For each tax band applicable to the type of transaction, multiply so much of the relevant consideration as falls within the band by the tax rate for that band.

Step 2

Calculate the sum of the amounts reached under Step 1.

The result is the total tax chargeable.

Step 3

Divide the chargeable consideration for the transaction by the relevant consideration.

Step 4

Multiply the total tax chargeable by the fraction reached under Step 3.

The result is the amount of tax chargeable.

- (2) The relevant consideration is the total of the chargeable consideration for all the linked transactions.
- (3) In the case of a transaction for which the whole or part of the chargeable consideration is rent this section has effect subject to section 55 (application of this Act to leases).
- (4) This section is subject to—
- (a) schedule 5 (multiple dwellings relief),
 - (b) schedule 9 (crofting community right to buy relief),
 - (c) Part 3 of schedule 11 (acquisition relief).

Reliefs

27 Reliefs

- (1) The following schedules provide for reliefs from the tax in relation to certain land transactions—
- schedule 3 (sale and leaseback relief),
 - schedule 4 (relief for certain acquisitions of residential property),
 - schedule 5 (multiple dwellings relief),
 - schedule 6 (relief for certain acquisitions by registered social landlords),
 - schedule 7 (alternative property finance relief),
 - schedule 8 (relief for alternative finance investment bonds),
 - schedule 9 (crofting community right to buy relief),
 - schedule 10 (group relief),
 - schedule 11 (reconstruction relief and acquisition relief),

schedule 12 (relief for incorporation of limited liability partnership),
 schedule 13 (charities relief),
 schedule 14 (relief for compulsory purchase facilitating development),
 schedule 15 (relief for compliance with planning obligations),
 schedule 16 (public bodies relief).

- (2) Any relief under any of those schedules must be claimed in a land transaction return or an amendment of such a return.
- (3) The Scottish Ministers may, by order, modify this Act so as to—
 - (a) add a relief,
 - (b) modify an existing relief, or
 - (c) remove a relief.
- (4) An order under subsection (3) may also modify any other enactment that the Scottish Ministers consider appropriate.

Liability for tax

28 Liability for tax

- (1) The buyer is liable to pay the tax in respect of a chargeable transaction.
- (2) As to the liability of buyers acting jointly, see—
 - (a) section 48(2)(c) (joint buyers),
 - (b) paragraph 3 of schedule 17 (partnerships), and
 - (c) paragraphs 14 to 17 of schedule 18 (trusts).

PART 4

RETURNS AND PAYMENT

CHAPTER 1

RETURNS

Duty to make return

29 Duty to make return

- (1) The buyer in a notifiable transaction must make a return to the Tax Authority.
- (2) If the transaction is a chargeable transaction, the return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the transaction.

Notifiable transactions

30 Notifiable transactions

- (1) A land transaction is notifiable unless it is—
- (a) an exempt transaction,
 - 5 (b) an acquisition of the ownership of land where the chargeable consideration for the acquisition is less than £40,000,
 - (c) an acquisition of a chargeable interest other than a major interest in land where the chargeable consideration does not exceed the nil rate tax band applicable to the transaction, or
 - 10 (d) an acquisition specified in regulations made under section 55 (application of this Act to leases).
- (2) In subsection (1)(b) and (c), “chargeable consideration”—
- (a) where the transaction is one of a number of linked transactions, means the total of the chargeable consideration for all the linked transactions,
 - 15 (b) includes any amount in respect of which tax would be chargeable but for a relief.
- (3) The exceptions in subsection (1)(a) to (d) do not apply where the transaction is a transaction that a person is treated as entering into by virtue of section 11(3).
- (4) This section has effect subject to—
- (a) section 10(3) (substantial performance without completion),
 - 20 (b) paragraph 17(6) of schedule 2 (arrangements involving public or educational bodies),
 - (c) paragraph 12 of schedule 7 (alternative property finance), and
 - (d) paragraph 40 of schedule 17 (transfer of partnership interests).
- 25 (5) The Scottish Ministers may, by order, amend subsection (1)(b) so as to substitute, for the figure for the time being specified there, a different figure.

Adjustments and further returns

31 Return where contingency ceases or consideration ascertained

- (1) The buyer in a land transaction must make a return to the Tax Authority if—
- 30 (a) section 18(2) or 19(2) (contingent, uncertain or unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),
 - (b) an event mentioned in subsection (2) occurs, and
 - (c) the effect of the event is that—
 - (i) the transaction becomes notifiable,
 - 35 (ii) additional tax is payable in respect of the transaction, or
 - (iii) tax is payable where none was payable before.
- (2) The events are—

(a) in the case of contingent consideration, the contingency occurs or it becomes clear that it will not occur, or

(b) in the case of uncertain or unascertained consideration, an amount relevant to the calculation of the consideration, or any instalment of consideration, becomes ascertained.

(3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the event occurred.

(4) The return must include an assessment of the tax that, on the basis of the information contained in the return, is chargeable in respect of the transaction.

(5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

32 Contingency ceases or consideration ascertained: less tax payable

(1) The buyer in a land transaction may take one of the steps mentioned in subsection (2) to obtain a repayment of tax if—

(a) section 18(2) or 19(2) (contingent, uncertain and unascertained consideration) applies in relation to the transaction (or to any transaction in relation to which it is a linked transaction),

(b) an event mentioned in section 31(2) occurs, and

(c) the effect of the event is that less tax is payable in respect of the transaction than has already been paid.

(2) The steps are—

(a) within the period allowed for amendment of the land transaction return, amend the return accordingly,

(b) after the end of that period (if the land transaction return is not so amended), make a claim to the Tax Authority for repayment of the amount overpaid.

(3) This section does not apply so far as the consideration consists of rent (see section 55 (application of this Act to leases)).

33 Further return where relief withdrawn

(1) The buyer in a land transaction must make a further return to the Tax Authority if relief is withdrawn to any extent under—

(a) Part 5 of schedule 4 (relief for certain acquisitions of residential property),

(b) Part 5 of schedule 5 (transfer of multiple dwellings),

(c) Part 3 of schedule 10 (group relief),

(d) Part 4 of schedule 11 (reconstruction relief and acquisition relief), or

(e) paragraph 4 of schedule 13 (charities relief).

(2) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable.

(3) The return must be made before the end of the period of 30 days beginning with the day after the date on which the relevant event occurred.

(4) The relevant event is—

- (a) in relation to the withdrawal of relief under schedule 4, an event mentioned in paragraph 14(a), (b) or (c) or 16(a), (b) or (c) of that schedule,
- (b) in relation to the withdrawal of relief under schedule 5, an event mentioned in paragraph 19(a) or 21(a) of that schedule,
- (c) in relation to the withdrawal of group relief, the buyer ceasing to be a member of the same group as the seller within the meaning of schedule 10,
- (d) in relation to the withdrawal of reconstruction relief or acquisition relief, the change of control of the acquiring company mentioned in paragraph 13 of schedule 11,
- (e) in relation to the withdrawal of charities relief, a disqualifying event as defined in paragraphs 5 and 6 of schedule 13.

34 Return or further return in consequence of later linked transaction

- (1) This section applies where the effect of a transaction (“the later transaction”) that is linked to an earlier transaction is that—
 - (a) the earlier transaction becomes notifiable,
 - (b) additional tax is payable in respect of the earlier transaction, or
 - (c) tax is payable in respect of the earlier transaction where none was payable before.
- (2) The buyer in the earlier transaction must make a return (or further return) in respect of that transaction.
- (3) The return must be made before the end of the period of 30 days beginning with the day after the effective date of the later transaction.
- (4) The return must include an assessment of the amount of tax that, on the basis of the information contained in the return, is chargeable as a result of the later transaction.
- (5) The tax so chargeable is to be calculated by reference to the tax rates and tax bands in force at the effective date of the earlier transaction.
- (6) This section does not affect any requirement to make a land transaction return in respect of the later transaction.

Returns: form and content etc.

35 Form and content

- (1) A return under this Act must—
 - (a) be in the form specified by the Tax Authority, and
 - (b) contain the information specified by the Tax Authority.
- (2) The Tax Authority may specify different forms and information for—
 - (a) different kinds of return, and
 - (b) different kinds of transaction.
- (3) The return is treated as containing any information provided by the buyer for the purpose of completing the return.

36 Declaration

- (1) A return under this Act must also include a declaration by the buyer that the return is, to the best of the buyer's knowledge, correct and complete.
- (2) However, where the buyer authorises an agent to complete the return—
 - (a) the agent must certify in the return that the buyer has declared that the information provided in the return, with the exception of the relevant date, is to the best of the buyer's knowledge, correct and complete, and
 - (b) the return must include a declaration by the agent that the relevant date provided in the return is, to the best of the agent's knowledge, correct.
- (3) The relevant date is—
 - (a) in relation to a return under section 29, the effective date of the transaction,
 - (b) in relation to a return under section 31, the date of the event as a result of which the return is required,
 - (c) in relation to a return under section 33, the date on which the relevant event occurred,
 - (d) in relation to a return under section 34, the effective date of the later transaction.

37 Amendment

- (1) The buyer in a land transaction may amend a return relating to the transaction by notice to the Tax Authority.
- (2) The notice must—
 - (a) be in the form specified by the Tax Authority, and
 - (b) contain the information specified by the Tax Authority.
- (3) An amendment may not be made more than 12 months after the last day of the period within which the return must be made.

Miscellaneous

38 Interpretation

References in this Act to the making of a return are to the making of a return that—

- (a) complies with the requirements of sections 35 and 36, and
- (b) contains an assessment of the tax chargeable in respect of the transaction (if one is required).

39 Power to amend period in which returns must be made

- (1) The Scottish Ministers may, by order, amend a provision listed in subsection (2) so as to substitute, for the period for the time being specified there, a different period.
- (2) The provisions are—
 - (a) section 29(3),

- (b) section 31(3),
- (c) section 33(3).

CHAPTER 2

PAYMENT OF TAX

40 Payment of tax

- (1) Tax payable in respect of a land transaction—
 - (a) must be paid to the Tax Authority, and
 - (b) must be paid at the same time as the land transaction return relating to the transaction is made.
- (2) Where a return is to be made under any of the following provisions, the tax or additional tax payable must be paid at the same time as the return is made—
 - (a) section 31 (return where contingency ceases or consideration ascertained),
 - (b) section 33 (further return where relief withdrawn), or
 - (c) section 34 (return or further return in consequence of later linked transaction).
- (3) Tax payable as a result of the amendment of a return must be paid at the same time as the amendment is made.
- (4) For the purposes of this Act, tax is treated as paid if arrangements satisfactory to the Tax Authority are made for payment of the tax.
- (5) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

41 Application to defer payment in case of contingent or uncertain consideration

- (1) The buyer may apply to the Tax Authority to defer payment of tax in a case where—
 - (a) the amount of tax payable depends on the amount or value of chargeable consideration that, at the effective date of the transaction, is contingent or uncertain, and
 - (b) the chargeable consideration falls to be paid or provided on one or more future dates of which at least one falls, or may fall, more than 6 months after the effective date of the transaction.
- (2) An application under this section must—
 - (a) be in the form specified by the Tax Authority, and
 - (b) contain the information specified by the Tax Authority.
- (3) An application under this section does not affect the buyer's obligations as regards payment of tax in respect of chargeable consideration that—
 - (a) has already been paid or provided at the time the application is made, or
 - (b) is not contingent and whose amount is ascertained or ascertainable at the time the application is made.

- (4) Subsection (3) applies as regards both the time of payment and the calculation of the amount payable.
- (5) This section does not apply so far as the consideration consists of rent (see section 55 (application of this Act to leases)).

42 Regulations about applications under section 41

- (1) The Scottish Ministers may, by regulations, make further provision about applications under section 41.
- (2) The regulations may in particular—
 - (a) specify when an application is to be made,
 - (b) require the buyer to provide such information as the Tax Authority may reasonably require for the purposes of determining whether to accept an application,
 - (c) specify the grounds on which an application may be refused,
 - (d) specify the procedure for reaching a decision on the application,
 - (e) make provision for postponing payment of tax when an application has been made,
 - (f) provide for the effect of accepting an application,
 - (g) require the buyer to make a return or further return, and to make such payments or further payments of tax as may be specified, in such circumstances as may be specified.
- (3) Regulations under this section may also provide that where the circumstances in subsection (4) arise—
 - (a) sections 31 and 32 (adjustment where contingency ceases or consideration is ascertained) do not apply in relation to the payment, and
 - (b) instead, any necessary adjustment is to be made in accordance with the regulations.
- (4) The circumstances are—
 - (a) a payment is made as mentioned in section 41(3), and
 - (b) an application under this section is accepted in respect of other chargeable consideration taken into account in calculating the amount of that payment.

CHAPTER 3

REGISTRATION OF LAND TRANSACTIONS ETC.

43 Return to be made and tax paid before application for registration

- (1) The Keeper of the Registers of Scotland (“the Keeper”) may not accept an application for registration of a document effecting or evidencing a notifiable transaction unless—
 - (a) a land transaction return has been made in relation to the transaction, and
 - (b) any tax payable in respect of the transaction has been paid.

- (2) The Tax Authority must provide the Keeper with such information as the Keeper reasonably requires to comply with subsection (1).
- (3) In this section, “registration” means registration or recording in any register under the management and control of the Keeper.
- 5 (4) This section is subject to section 41 (application to defer payment of tax in case of contingent or uncertain consideration).

PART 5

APPLICATION OF ACT TO CERTAIN PERSONS AND BODIES

44 Companies and other organisations

- 10 (1) Everything to be done by an organisation under this Act is to be done by the organisation acting through—
 - (a) the proper officer of the organisation, or
 - (b) another person having for the time being the express, implied or apparent authority of the organisation to act on its behalf for the purpose.
- 15 (2) Subsection (1)(b) does not apply where a liquidator has been appointed for the organisation.
- (3) For the purposes of this Act—
 - (a) the proper officer of a company is the secretary, or person acting as secretary, of the company,
 - 20 (b) the proper officer of an unincorporated association (or of a company that does not have a proper officer within paragraph (a)) is the treasurer, or person acting as treasurer, of the association or, as the case may be, the company.
- (4) But, where a liquidator or administrator has been appointed for the organisation, the liquidator or, as the case may be, the administrator is the proper officer.
- 25 (5) If two or more persons are appointed to act jointly or concurrently as the administrator of the organisation, the reference to the administrator in subsection (4) is to—
 - (a) such one of them as is specified in a notice given to the Tax Authority by those persons for the purposes of this section, or
 - 30 (b) where the Tax Authority is not so notified, such one or more of those persons as the Tax Authority may designate as the proper officer for those purposes.
- (6) In this section, “organisation” means—
 - (a) a company,
 - (b) an unincorporated association.

45 Unit trust schemes

- 35 (1) This Act (with the exception of the provisions mentioned in subsection (8)) applies in relation to a unit trust scheme as if—
 - (a) the trustees were a company, and
 - (b) the rights of the unit holders were shares in the company.

- (2) Each of the parts of an umbrella scheme is regarded for the purposes of this Act as a separate unit trust scheme and the umbrella scheme as a whole is not so regarded.
- (3) An “umbrella scheme” means a unit trust scheme—
 - (a) that provides arrangements for separate pooling of the contributions of participants and the profits or income out of which payments are to be made for them, and
 - (b) under which the participants are entitled to exchange rights in one pool for rights in another.
- (4) A “part” of an umbrella scheme means such of the arrangements as relate to a separate pool.
- (5) In this Act—

“unit trust scheme” has the same meaning as in the Financial Services and Markets Act 2000 (c.8), and

“unit holder” means a participant in a unit trust scheme.
- (6) The Scottish Ministers may, by regulations, provide that a scheme of a description specified in the regulations is to be treated as not being a unit trust scheme for the purposes of this Act.
- (7) Section 620 of the Corporation Tax Act 2010 (c.4) (court investment funds treated as authorised unit trusts) applies for the purposes of this Act as it applies for the purposes of that Act, with the substitution for references to an authorised unit trust of references to a unit trust scheme.
- (8) An unit trust scheme is not to be treated as a company for the purposes of schedules 10 (group relief) and 11 (reconstruction relief and acquisition relief).

46 Open-ended investment companies

- (1) The Scottish Ministers may, by regulations, make such provision as they consider appropriate for securing that the provisions of this Act have effect in relation to—
 - (a) open-ended investment companies of such description as may be prescribed in the regulations, and
 - (b) transactions involving such companies,

in a manner corresponding, subject to such modifications as the Scottish Ministers consider appropriate, to the manner in which they have effect in relation to unit trust schemes and transactions involving such trusts.
- (2) The regulations may, in particular, make provision—
 - (a) modifying the operation of any provision in relation to open-ended investment companies so as to secure that arrangements for treating the assets of such a company as assets comprised in separate pools are given an effect corresponding to that of equivalent arrangements constituting the separate parts of an umbrella scheme,
 - (b) treating the separate parts of the undertaking of an open-ended investment company in relation to which such provision is made as distinct companies for the purposes of this Act.
- (3) In this section—

“open-ended investment company” has the meaning given by section 236 of the Financial Services and Markets Act 2000 (c.8),

“umbrella scheme” has the same meaning as in section 45.

47 Residential property holding companies

(1) The Scottish Ministers may, by regulations, provide for qualifying transfers of interests in residential property holding companies—

- (a) to be treated as land transactions, and
- (b) to be chargeable transactions.

(2) A “residential property holding company” means a company—

- (a) whose sole or main activity is holding or investing in chargeable interests in residential property,
- (b) whose property consists of or includes chargeable interests in residential property, and
- (c) whose shares are not listed on a recognised stock exchange.

(3) A “qualifying transfer” is a transfer of an interest in such a company that results in the transferee acquiring the right to occupy some or all of the company’s residential property.

(4) Regulations under subsection (1) may in particular make provision, or further provision, about—

- (a) the kinds of interest, transfer of which is a qualifying transfer,
- (b) the kinds of transfers which are and are not qualifying transfers,
- (c) the rights which are rights to occupy a company’s residential property for the purposes of such transfers,
- (d) the chargeable consideration in the case of such transfers,
- (e) the tax bands and tax rates that are to apply to such transfers,
- (f) the person who is to be liable to pay the tax,
- (g) the application or disapplication of any reliefs in relation to such transfers.

(5) Regulations under subsection (1) may modify any enactment (including this Act).

48 Joint buyers

(1) This section applies to a land transaction where there are two or more buyers who are or will be jointly entitled to the interest acquired.

(2) The general rules are that—

- (a) any obligation of the buyer under this Act in relation to the transaction is an obligation of the buyers jointly but may be discharged by any of them,
- (b) anything required or authorised by this Act to be done in relation to the buyer must be done by or in relation to all of them, and
- (c) any liability of the buyer under this Act in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the buyers.

- (3) The general rules are subject to the following provisions—
- (a) if the transaction is a notifiable transaction, a single land transaction return is required,
 - (b) the declaration required by section 36(1) or (2)(a) (declaration that return is complete and correct) must be made by all the buyers.
- (4) This section has effect subject to—
- (a) the provisions of schedule 17 (partnerships), and
 - (b) paragraphs 14 to 17 of schedule 18 (trusts).

49 Partnerships

Schedule 17 makes provision about the application of this Act in relation to partnerships.

50 Trusts

Schedule 18 makes provision about the application of this Act in relation to trusts.

51 Persons acting in a representative capacity etc.

- (1) The personal representatives of a person who is the buyer in a land transaction—
- (a) are responsible for discharging the obligations of the buyer under this Act in relation to the transaction, and
 - (b) may deduct any payment made by them under this Act out of the assets and effects of the deceased person.
- (2) A receiver appointed by a court in the United Kingdom having the direction and control of any property is responsible for discharging any obligations under this Act in relation to a transaction affecting that property as if the property were not under the direction and control of the court.

PART 6

GENERAL AND INTERPRETATION

The Tax Authority

52 The Tax Authority

- (1) For the purposes of this Act, the Tax Authority is the Scottish Ministers.
- (2) The Scottish Ministers may, by order, amend subsection (1) to provide that another person is the Tax Authority.

53 Delegation of functions to Keeper

- (1) The Tax Authority may delegate the exercise of any of its functions under this Act to the Keeper of the Registers of Scotland.
- (2) But subsection (1) does not apply to any function of making an order or regulations.
- (3) A delegation under this section may be varied or revoked at any time.

- (4) A delegation under this section does not affect the Tax Authority’s responsibility for the exercise of any functions delegated or the Authority’s ability to carry out such functions.
- (5) The Tax Authority may reimburse the Keeper for any expenditure incurred which is attributable to the exercise by the Keeper of functions delegated under this section.

54 Review and appeal

- (1) The Scottish Ministers may, by regulations, make provision for—
 - (a) the review by the Tax Authority, on the application of a specified person, of any specified kind of decision by the Tax Authority,
 - (b) the appeal by a specified person to a tribunal or court against any specified kind of decision by the Tax Authority.
- (2) Regulations under this section may modify any provision made by or under this Act.
- (3) In this section, “specified” means specified in the regulations.

Leases

55 Application of this Act to leases

- (1) The Scottish Ministers must, by regulations, make provision about the application of this Act in relation to leases.
- (2) The regulations may, in particular—
 - (a) make provision for transactions, which result in the acquisition of interests in leases, to be land transactions,
 - (b) make provision for what the chargeable consideration is to be in relation to a lease,
 - (c) make provision for the determination of the amount or value of that chargeable consideration,
 - (d) make provision for the calculation of the tax chargeable,
 - (e) specify that certain land transactions relating to a lease are not to be notifiable under section 30.
- (3) Regulations under this section may modify any enactment (including this Act).

Linked transactions

56 Linked transactions

- (1) Transactions are linked for the purposes of this Act if they form part of a single scheme, arrangement or series of transactions between the same seller and buyer or, in either case, persons connected with them.
- (2) Where there are two or more linked transactions with the same effective date, the buyer, or all of the buyers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction.
- (3) Where two or more buyers make a single return in respect of linked transactions, section 48 applies as if—
 - (a) the transaction in question were a single transaction, and

- (b) those buyers were buyers acting jointly.
- (4) This section is subject to section 13(1) (exchanges).

Connected persons

57 Connected persons

Section 1122 of the Corporation Tax Act 2010 (c.4) (connected persons) has effect for the purposes of the following provisions—

- (a) section 14,
- (b) section 22,
- (c) section 23,
- (d) section 56,
- (e) paragraphs 1, 11 and 13 of schedule 2,
- (f) schedule 4,
- (g) Part 5 of schedule 5,
- (h) schedule 17 (but see paragraph 48).

Interpretation

58 Meaning of “residential property”

- (1) In this Act “residential property” means—
 - (a) a building that is used or is suitable for use as a dwelling, or is in the process of being constructed or adapted for such use,
 - (b) land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or other structure on such land), or
 - (c) an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b).
- (2) Accordingly, “non-residential property” means any property that is not residential property.
- (3) For the purposes of subsection (1) a building used for any of the following purposes is used as a dwelling—
 - (a) residential accommodation for school pupils,
 - (b) residential accommodation for students, other than accommodation falling within subsection (4)(b),
 - (c) residential accommodation for members of the armed forces,
 - (d) an institution that is the sole or main residence of at least 90% of its residents and does not fall within any of paragraphs (a) to (f) of subsection (4).
- (4) For the purposes of subsection (1) a building used for any of the following purposes is not used as a dwelling—
 - (a) a home or other institution providing residential accommodation for children,
 - (b) a hall of residence for students in further or higher education,

(c) a home or other institution providing residential accommodation with personal care for persons in need of personal care by reason of old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder,

(d) a hospital or hospice,

(e) a prison or similar establishment,

(f) a hotel or inn or similar establishment.

(5) Where a building is used for a purpose specified in subsection (4), no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use.

(6) Where a building that is not in use is suitable for use for at least one of the purposes specified in subsection (3) and at least one of those specified in subsection (4)—

(a) if there is one such use for which it is most suitable, or if the uses for which it is most suitable are all specified in the same paragraph, no account is to be taken for the purposes of subsection (1)(a) of its suitability for any other use,

(b) otherwise, the building is to be treated for those purposes as suitable for use as a dwelling.

(7) In this section “building” includes part of a building.

(8) Where six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, then, for the purposes of this Act as it applies in relation to that transaction, those dwellings are treated as not being residential property.

(9) The Scottish Ministers may, by order—

(a) amend subsections (3) and (4) so as to change or clarify the cases where use of a building is, or is not to be, use of a building as a dwelling for the purposes of subsection (1),

(b) amend or repeal subsection (8).

59 Meaning of “major interest” in land

References in this Act to a “major interest” in land are to—

(a) ownership of land, or

(b) the tenant’s right over or interest in land subject to a lease.

60 Meaning of “subject-matter” and “main subject-matter”

References in this Act to the subject-matter of a land transaction or a contract are to the chargeable interest acquired (the “main subject-matter”) by virtue of the transaction or contract, together with any interest or right pertaining to it that is acquired with it.

61 Meaning of “market value”

For the purpose of this Act “market value” is to be determined as for the purposes of the Taxation of Chargeable Gains Act 1992 (c.12) (see sections 272 to 274 of that Act).

62 Meaning of “effective date” of a transaction

- (1) Except as otherwise provided, the effective date of a land transaction for the purposes of this Act is—
 - (a) the date of completion, or
 - (b) such alternative date as the Scottish Ministers may prescribe by regulations.
- (2) Other provision as to the effective date of certain land transactions is made by—
 - (a) section 10(2) (substantial performance of contract without settlement),
 - (b) section 11(4) (substantial performance of contract requiring conveyance to third party), and
 - (c) section 12(4) (options and rights of pre-emption).

63 Meaning of “completion”

- (1) In this Act, “completion” means—
 - (a) in relation to a lease, when it is executed by the parties or constituted by any means,
 - (b) in relation to any other transaction, the settlement of the transaction.
- (2) References to completion are to completion of the land transaction proposed, between the same parties, in substantial conformity with the contract.

64 General interpretation

In this Act—

“acquisition relief” means relief under Part 3 of schedule 11,

“charities relief” means relief under schedule 13,

“company” means (except as otherwise expressly provided) a body corporate other than a partnership,

“contract” includes any agreement,

“conveyance” includes any instrument,

“employee” includes an office-holder and related expressions have a corresponding meaning,

“group relief” means relief under schedule 10,

“jointly entitled” means entitled as joint owners or common owners,

“land transaction return” means a return under section 29(1),

“personal representatives”, in relation to a person, include that person’s executors,

“reconstruction relief” means relief under Part 2 of schedule 11,

“registered social landlord” means a body registered in the register maintained under section 20(1) of the Housing (Scotland) Act 2010 (asp 17),

“the tax” means land and buildings transaction tax.

65 Index of defined expressions

Schedule 19 contains an index of expressions defined or otherwise explained in this Act.

PART 7

FINAL PROVISIONS

Ancillary provision

66 Ancillary provision

- (1) The Scottish Ministers may, by order, make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of, in consequence of, or for giving full effect to, any provision made by or under this Act.
- (2) An order under subsection (1) may modify any enactment (including this Act).

Subordinate legislation

67 Subordinate legislation

- (1) Any power conferred by this Act on the Scottish Ministers to make an order or regulations includes the power to make—
- (a) different provision for different cases or descriptions of case or for different purposes,
 - (b) such incidental, supplementary, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.
- (2) Orders and regulations under the following provisions are subject to the affirmative procedure—
- (a) section 5(4),
 - (b) section 24(1) (but only the first order),
 - (c) section 27(3),
 - (d) section 52(2),
 - (e) section 58(9),
 - (f) paragraph 8 of schedule 1,
 - (g) paragraph 1 of schedule 8.
- (3) Orders and regulations under the following provisions which add to, replace or omit the text of any Act (including this Act) are also subject to the affirmative procedure—
- (a) section 17(2),
 - (b) section 47(1),
 - (c) section 54(1),
 - (d) section 55(1),
 - (e) section 66(1).
- (4) All other orders and regulations under this Act are subject to the negative procedure.

- (5) This section does not apply to an order under section 69(2).

Crown application

68 Crown application

Nothing in this Act affects Her Majesty in Her private capacity.

5

Commencement and short title

69 Commencement

- (1) This section and sections 52, 53, 66, 67 and 70 come into force on the day of Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may, by order, appoint.
- (3) An order under subsection (2) may contain such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient.

10

70 Short title

The short title of this Act is the Land and Buildings Transaction Tax (Scotland) Act 2013.

15

SCHEDULE 1
(introduced by section 16)

EXEMPT TRANSACTIONS

No chargeable consideration

- 5 1 A land transaction is an exempt transaction if there is no chargeable consideration for the transaction.

Acquisitions by the Crown

- 2 A land transaction under which the buyer is any of the following is an exempt transaction—
- 10 (a) the Scottish Ministers,
- (b) the Scottish Parliamentary Corporate Body,
- (c) a Minister of the Crown,
- (d) the Corporate Officer of the House of Lords,
- (e) the Corporate Officer of the House of Commons,
- 15 (f) a Northern Ireland department,
- (g) the Northern Ireland Assembly Commission,
- (h) the Welsh Ministers, the First Minister for Wales and the Counsel General to the Welsh Assembly Government,
- (i) the National Assembly for Wales Commission,
- 20 (j) the National Assembly for Wales.

Residential leases and licences

- 3 (1) The grant, assignation or renunciation of—
- (a) a lease of residential property (which is not a qualifying lease), or
- (b) a licence to occupy such property,
- 25 is an exempt transaction.
- (2) In sub-paragraph (1), “qualifying lease” has the same meaning as in the Long Leases (Scotland) Act 2012 (asp 9).

Transactions in connection with divorce etc.

- 30 4 A transaction between one party to a marriage and the other is an exempt transaction if it is effected—
- (a) in pursuance of an order of a court made on granting, in respect of the parties, a decree of divorce, nullity of marriage or judicial separation,
- (b) in pursuance of an order of a court made in connection with the dissolution or annulment of the marriage, or the parties' judicial separation, at any time after the
- 35 granting of such a decree,
- (c) in pursuance of—

(i) an order of a court made at any time under section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or

(ii) an incidental order of a court made under section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act,

5 (d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the marriage, their judicial separation or the making of a separation order in respect of them.

Transactions in connection with dissolution of civil partnership etc.

10 5 A transaction between one party to a civil partnership and the other is an exempt transaction if it is effected—

(a) in pursuance of an order of a court made on granting, in respect of the parties, an order or decree for the dissolution or annulment of the civil partnership or their judicial separation,

15 (b) in pursuance of an order of a court made in connection with the dissolution or annulment of the civil partnership, or the parties' judicial separation, at any time after the granting of such an order or decree for dissolution, annulment or judicial separation as mentioned in paragraph (a),

(c) in pursuance of—

20 (i) an order of a court made at any time under any provision of schedule 5 to the Civil Partnership Act 2004 (c.33) that corresponds to section 22A, 23A or 24A of the Matrimonial Causes Act 1973 (c.18), or

25 (ii) an incidental order of a court made under any provision of the Civil Partnership Act 2004 (c.33) that corresponds to section 8(2) of the Family Law (Scotland) Act 1985 (c.37) by virtue of section 14(1) of that Act of 1985,

(d) at any time in pursuance of an agreement of the parties made in contemplation or otherwise in connection with the dissolution or annulment of the civil partnership, their judicial separation or the making of a separation order in respect of them.

Assents and appropriations by personal representatives

30 6 (1) The acquisition of property by a person in or towards satisfaction of the person's entitlement under or in relation to the will of a deceased person, or on the intestacy of a deceased person, is an exempt transaction.

(2) Sub-paragraph (1) does not apply if the person acquiring the property gives any consideration for it, other than the assumption of secured debt.

35 (3) Where sub-paragraph (1) does not apply because of sub-paragraph (2), the chargeable consideration for the transaction is determined in accordance with paragraph 9(1) of schedule 2.

(4) In this paragraph—

40 “debt” means an obligation, whether certain or contingent, to pay a sum of money either immediately or at a future date, and

“secured debt” means debt that, immediately after the death of the deceased person, is secured on the property.

Variation of testamentary dispositions etc.

- 7 (1) A transaction following a person's death that varies a disposition (whether effected by will, under the law relating to intestacy or otherwise) of property of which the deceased was competent to dispose is an exempt transaction if the following conditions are met.
- 5 (2) The conditions are—
- (a) that the transaction is carried out within the period of 2 years after a person's death, and
 - (b) that no consideration in money or money's worth other than the making of a variation of another such disposition is given for it.
- 10 (3) Where the condition in sub-paragraph (2)(b) is not met, the chargeable consideration for the transaction is determined in accordance with paragraph 9(3) of schedule 2.
- (4) This paragraph applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

Power to add further exemptions

- 15 8 The Scottish Ministers may, by regulations, modify this schedule so as to—
- (a) add a description of land transaction as an exempt transaction,
 - (b) provide that a description of land transaction is no longer an exempt transaction,
 - (c) vary a description of an exempt transaction.

SCHEDULE 2
(introduced by section 17)

CHARGEABLE CONSIDERATION

Money or money's worth

- 1 The chargeable consideration for a transaction is, except as otherwise provided, any consideration in money or money's worth given for the subject-matter of the transaction,
- 25 directly or indirectly, by the buyer or a person connected with the buyer.

Value added tax

- 2 The chargeable consideration for a transaction includes any value added tax chargeable in respect of the transaction, other than value added tax chargeable by virtue of an option to tax any land under Part 1 of schedule 10 to the Value Added Tax Act 1994
- 30 (c.23) made after the effective date of the transaction.

Postponed consideration

- 3 The amount or value of the chargeable consideration for a transaction is to be determined without any discount for postponement of the right to receive it or any part of it.

Just and reasonable apportionment

- 4 (1) For the purposes of this Act consideration attributable—
- (a) to two or more land transactions, or
 - (b) in part to a land transaction and in part to another matter, or
 - 5 (c) in part to matters making it chargeable consideration and in part to other matters,
- is to be apportioned on a just and reasonable basis.
- (2) If the consideration is not so apportioned, this Act has effect as if it had been so apportioned.
- 10 (3) For the purposes of this paragraph any consideration given for what is in substance one bargain is to be treated as attributable to all the elements of the bargain, even though—
- (a) separate consideration is, or purports to be, given for different elements of the bargain, or
 - (b) there are, or purport to be, separate transactions in respect of different elements of the bargain.

Exchanges

- 5 (1) This paragraph applies to determine the chargeable consideration where one or more land transactions are entered into by a person as buyer (alone or jointly) wholly or partly in consideration of one or more other land transactions being entered into by that person (alone or jointly) as seller.
- 20 (2) In this paragraph—
- “relevant acquisition” means a relevant transaction entered into as buyer,
 - “relevant disposal” means a relevant transaction entered into as seller, and
 - “relevant transaction” means any of those transactions.
- 25 (3) The following rules apply if the subject-matter of any of the relevant transactions is a major interest in land—
- (a) where a single relevant transaction is made, the chargeable consideration for the acquisition is—
 - (i) the market value of the subject-matter of the acquisition, and
 - (ii) if the acquisition is the grant of a lease, the rent,
 - 30 (b) where two or more relevant transactions are made, the chargeable consideration for each relevant acquisition is—
 - (i) the market value of the subject-matter of the acquisition, and
 - (ii) if the acquisition is the grant of a lease, the rent.
- 35 (4) The following rules apply if the subject-matter of none of the relevant transactions is a major interest in land—
- (a) where a single relevant acquisition is made in consideration of one or more relevant disposals, the chargeable consideration for the acquisition is the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisition,

- (b) where two or more relevant acquisitions are made in consideration of one or more relevant disposals, the chargeable consideration for each relevant acquisition is the appropriate proportion of the amount or value of any chargeable consideration other than the disposal or disposals that are given for the acquisitions.

(5) For the purposes of sub-paragraph (4)(b) the appropriate proportion is—

$$\frac{MV}{TMV}$$

where—

MV is the market value of the subject-matter of the acquisition for which the chargeable consideration is being determined, and

TMV is the total market value of the subject-matter of all the relevant acquisitions.

- (6) This paragraph is subject to paragraph 6 (partition etc.: disregard of existing interests).
- (7) This paragraph does not apply in a case to which paragraph 17 (arrangements involving public or educational bodies) applies.

Partition etc.: disregard of existing interest

6 In the case of a land transaction giving effect to a partition or division of a chargeable interest to which persons are jointly entitled, the share of the interest held by the buyer immediately before the partition or division does not count as chargeable consideration.

Valuation of non-monetary consideration

7 Except as otherwise expressly provided, the value of any chargeable consideration for a land transaction, other than—

- (a) money (whether in sterling or another currency), or
- (b) debt as defined for the purposes of paragraph 8 (debt as consideration),

is to be taken to be its market value at the effective date of the transaction.

Debt as consideration

8 (1) Where the chargeable consideration for a land transaction consists in whole or in part of—

- (a) the satisfaction or release of a debt due to the buyer or owed by the seller, or
- (b) the assumption of existing debt by the buyer,

the amount of debt satisfied, released or assumed is to be taken to be the whole or, as the case may be, part of the chargeable consideration for the transaction.

(2) Where—

- (a) a debt is secured on the subject-matter of a land transaction immediately before and immediately after the transaction, and
- (b) the rights or liabilities in relation to that debt of any party to the transaction are changed as a result of or in connection with the transaction,

then for the purposes of this paragraph there is an assumption of that debt by the buyer, and that assumption of debt constitutes chargeable consideration for the transaction.

(3) Where in a case in which sub-paragraph (1)(b) applies—

(a) the debt assumed is or includes debt secured on the property forming the subject-matter of the transaction, and

(b) immediately before the transaction there were two or more persons each holding an undivided share of that property, or there were two or more such persons immediately afterwards,

the amount of secured debt assumed is to be determined as if the amount of that debt owed by each of those persons at a given time were the proportion of it corresponding to the person's undivided share of the property at that time.

(4) If the effect of this paragraph would be that the amount of the chargeable consideration for the transaction exceeded the market value of the subject-matter of the transaction, the amount of the chargeable consideration is treated as limited to that value.

(5) In this paragraph—

“debt” has the same meaning as in paragraph 6(4) of schedule 1,

“existing debt”, in relation to a transaction, means debt created or arising before the effective date of, and otherwise than in connection with, the transaction, and

references to the amount of a debt are to the principal amount payable or, as the case may be, the total of the principal amounts payable, together with the amount of any interest that has accrued due on or before the effective date of the transaction.

Cases where conditions for exemption not fully met

(1) Where a land transaction would be an exempt transaction under paragraph 6 of schedule 1 (assents and appropriations by personal representative) but for sub-paragraph (2) of that paragraph (cases where person acquiring property gives consideration for it), the chargeable consideration for the transaction does not include the amount of any secured debt assumed.

(2) In this paragraph, “secured debt” has the same meaning as in paragraph 6(4) of schedule 1.

(3) Where a land transaction would be an exempt transaction under paragraph 7 of schedule 1 (variation of testamentary dispositions etc.) but for a failure to meet the condition in sub-paragraph (2)(b) of that paragraph (no consideration other than variation of another disposition), the chargeable consideration for the transaction does not include the making of any such variation as is mentioned in that sub-paragraph.

Conversion of amounts in foreign currency

(1) References in this Act to the amount or value of the consideration for a transaction are to its amount or value in sterling.

(2) For the purposes of this Act the sterling equivalent of an amount expressed in another currency is to be ascertained by reference to the London closing exchange rate on the effective date of the transaction (unless the parties have used a different rate for the purposes of the transaction).

Carrying out of works

11 (1) Where the whole or part of the consideration for a land transaction consists of the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land, then—

5 (a) to the extent that the conditions specified in sub-paragraph (2) are met, the value of the works does not count as chargeable consideration, and

(b) to the extent that those conditions are not met, the value of the works is to be taken into account as chargeable consideration.

(2) The conditions are—

10 (a) that the works are carried out after the effective date of the transaction,

(b) that the works are carried out on land acquired or to be acquired under the transaction, and

(c) that it is not a condition of the transaction that the works are carried out by the seller or a person connected with the seller.

15 (3) Where, by virtue of section 10(3) (substantial performance of contract without completion), there are two notifiable transactions (the first being the contract or agreement and the second being the transaction effected on completion or, as the case may be, the grant or execution of the lease), the condition in sub-paragraph (2)(a) is treated as met in relation to the second transaction if it is met in relation to the first.

20 (4) In this paragraph—

(a) references to the acquisition of land are to the acquisition of a major interest in it,

(b) the value of the works is to be taken to be the amount that would have to be paid in the open market for the carrying out of the works in question.

25 (5) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

Provision of services

12 (1) Where the whole or part of the consideration for a land transaction consists of the provision of services (other than the carrying out of works to which paragraph 11 applies), the value of that consideration is to be taken to be the amount that would have to be paid in the open market to obtain those services.

(2) This paragraph is subject to paragraph 17 (arrangements involving public or educational bodies).

Land transaction entered into by reason of employment

13 Where a land transaction is entered into by reason of the buyer's employment, or that of a person connected with the buyer, the consideration for the transaction is to be taken to be not less than the market value of the subject-matter of the transaction as at the effective date of the transaction.

Indemnity given by buyer

- 14 Where the buyer agrees to indemnify the seller in respect of liability to a third party arising from breach of an obligation owed by the seller in relation to the land that is the subject of the transaction, neither the agreement nor any payment made in pursuance of it counts as chargeable consideration.

Buyer bearing inheritance tax liability

- 15 Where—

- (a) there is a land transaction that is—

- (i) a transfer of value within section 3 of the Inheritance Tax Act 1984 (c.51) (transfers of value), or
- (ii) a disposition, effected by will or under the law of intestacy, of a chargeable interest comprised in the estate of a person immediately on the person's death, and

- (b) the buyer is or becomes liable to pay, agrees to pay or does in fact pay any inheritance tax due in respect of the transfer or disposition,

the buyer's liability, agreement or payment does not count as chargeable consideration for the transaction.

Buyer bearing capital gains tax liability

- 16 (1) Where—

- (a) there is a land transaction under which the chargeable interest in question—

- (i) is acquired otherwise than by a bargain made at arm's length, or
- (ii) is treated by section 18 of the Taxation of Chargeable Gains Act 1982 (c.12) (connected persons) as so acquired, and

- (b) the buyer is or becomes liable to pay, or does in fact pay, any capital gains tax due in respect of the corresponding disposal of the chargeable interest,

the buyer's liability or payment does not count as chargeable consideration for the transaction.

- (2) Sub-paragraph (1) does not apply if there is chargeable consideration for the transaction (disregarding the liability or payment referred to in sub-paragraph (1)(b)).

Arrangements involving public or educational bodies

- 17 (1) This paragraph applies in any case where arrangements are entered into under which—

- (a) there is a transfer of the ownership, or the grant or assignation of a lease, of land by a qualifying body (A) to a non-qualifying body (B) ("the main transfer"),
- (b) in consideration (whether in whole or in part) of the main transfer there is a grant by B to A of a lease or sub-lease of the whole, or substantially the whole, of that land ("the leaseback"),
- (c) B undertakes to carry out works or provide services to A, and

(d) some or all of the consideration given by A to B for the carrying out of those works or the provision of those services is consideration in money,

whether or not there is also a transfer of the ownership, or the grant or assignation of a lease, of any land by A to B (a “transfer of surplus land”).

5 (2) The following are qualifying bodies—

(a) public bodies within paragraph 4 of schedule 16,

(b) grant-aided schools within the meaning of section 135(1) of the Education (Scotland) Act 1980 (c.44), and

10 (c) any body listed in schedule 2 to the Further and Higher Education (Scotland) Act 2005 (asp 6).

(3) The Scottish Ministers may, by order, modify sub-paragraph (2) so as to—

(a) add a person or body to the list of qualifying bodies,

(b) remove a person or body from that list,

(c) vary the description of any qualifying body.

15 (4) The following do not count as chargeable consideration for the main transfer or any transfer of surplus land—

(a) the leaseback,

(b) the carrying out of building works by B for A, or

(c) the provision of services by B to A.

20 (5) The chargeable consideration for the leaseback does not include—

(a) the main transfer,

(b) any transfer of surplus land, or

(c) the consideration in money paid by A to B for the building works or other services referred to in sub-paragraph (4).

25 (6) Sub-paragraphs (4) and (5) are to be disregarded for the purposes of determining whether the land transaction in question is notifiable.

SCHEDULE 3 (introduced by section 27)

SALE AND LEASEBACK RELIEF

30 *The relief*

1 The leaseback element of a sale and leaseback arrangement is exempt from charge if the qualifying conditions are met.

Sale and leaseback arrangements

2 A sale and leaseback arrangement is an arrangement under which—

35 (a) a person (A) transfers or grants to another person (B) a major interest in land (the “sale”), and

(b) out of that interest B grants a lease to A (the “leaseback”).

Qualifying conditions

3 The qualifying conditions are—

- (a) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
- 5 (b) that the only other consideration (if any) for the sale is the payment of money (whether in sterling or another currency) or the assumption, satisfaction or release of a debt (or both), and
- (c) where A and B are both bodies corporate at the effective date of the leaseback transaction, that they are not members of the same group for the purposes of group relief (see schedule 10) at that date.

Interpretation

4 In this schedule, “debt” has the same meaning as in paragraph 6(4) of schedule 1.

SCHEDULE 4 *(introduced by section 27)*

RELIEF FOR CERTAIN ACQUISITIONS OF RESIDENTIAL PROPERTY

PART 1

INTRODUCTORY

Overview of reliefs

1 (1) This schedule provides for relief in the case of certain acquisitions of residential property.

(2) It is arranged as follows—

Part 2 provides for relief in the case of an acquisition by a house-building company from an individual acquiring a new dwelling,

Part 3 provides for relief in the case of an acquisition by a property trader from an individual acquiring a new dwelling,

Part 4 provides for relief in the case of an acquisition by a property trader from an individual where a chain of transactions breaks down,

Part 5 provides for the withdrawal of those reliefs in certain circumstances,

Part 6 defines expressions used in this schedule.

PART 2

ACQUISITION BY HOUSE-BUILDING COMPANY FROM INDIVIDUAL ACQUIRING NEW DWELLING

Full relief

2 Where a dwelling (“the old dwelling”) is acquired by a house-building company from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

- 3 Where qualifying conditions (a) to (d) but not (e) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

5 *Qualifying conditions*

- 4 In this Part of this schedule, the qualifying conditions are—

- (a) that the individual (whether alone or with other individuals) acquires a new dwelling from the house-building company,
- 10 (b) that the individual occupied the old dwelling as the individual's only or main residence at some time in the period of 2 years ending with the date of its acquisition,
- (c) that the individual intends to occupy the new dwelling as the individual's only or main residence,
- (d) that each acquisition is entered into in consideration of the other, and
- 15 (e) that the area of land acquired by the house-building company does not exceed the permitted area.

PART 3

ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL ACQUIRING NEW DWELLING

Full relief

- 20 5 Where a dwelling (“the old dwelling”) is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

- 25 6 Where qualifying conditions (a) to (e) but not (f) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Qualifying conditions

- 7 In this Part of this schedule, the qualifying conditions are—

- 30 (a) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals who acquire new dwellings from house-building companies,
- (b) that the individual (whether alone or with other individuals) acquires a new dwelling from a house-building company,
- 35 (c) that the individual occupied the old dwelling as the individual's only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(d) that the individual intends to occupy the new dwelling as the individual's only or main residence,

(e) that the property trader does not intend—

(i) to spend more than the permitted amount on refurbishment of the old dwelling,

(ii) to grant a lease or licence of the old dwelling, or

(iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and

(f) that the area of land acquired by the property trader does not exceed the permitted area.

Paragraph 7(e)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

PART 4

ACQUISITION BY PROPERTY TRADER FROM INDIVIDUAL WHERE CHAIN OF TRANSACTIONS BREAKS DOWN

Full relief

Where a dwelling ("the old dwelling") is acquired by a property trader from an individual (whether alone or with other individuals), the acquisition is exempt from charge if the qualifying conditions are met.

Partial relief

Where qualifying conditions (a) to (g) but not (h) are met, the chargeable consideration for the acquisition is taken to be the amount calculated by deducting the market value of the permitted area from the market value of the old dwelling.

Qualifying conditions

In this Part of this schedule, the qualifying conditions are—

(a) that the individual has made arrangements to sell the old dwelling and acquire another dwelling ("the second dwelling"),

(b) that the arrangements to sell the old dwelling fail,

(c) that the acquisition of the old dwelling is made for the purpose of enabling the individual's acquisition of the second dwelling to proceed,

(d) that the acquisition is made in the course of a business that consists of or includes acquiring dwellings from individuals in the circumstances mentioned in conditions (a) to (c),

(e) that the individual occupied the old dwelling as the individual's only or main residence at some time in the period of 2 years ending with the date of its acquisition,

(f) that the individual intends to occupy the second dwelling as the individual's only or main residence,

- (g) that the property trader does not intend—
- (i) to spend more than the permitted amount on refurbishment of the old dwelling,
 - (ii) to grant a lease or licence of the old dwelling, or
 - (iii) to permit any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling, and
- (h) that the area of land acquired does not exceed the permitted area.
- 12 Paragraph 11(g)(ii) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

PART 5

WITHDRAWAL OF RELIEF

Introductory

- 13 (1) Relief under this schedule is withdrawn in the following circumstances.
- (2) Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the acquisition but for the relief.

Relief under Part 3

- 14 Relief under Part 3 of this schedule (acquisition by property trader from individual acquiring new dwelling) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling,
 - (b) grants a lease or licence of the old dwelling, or
 - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.
- 15 Paragraph 14(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

Relief under Part 4

- 16 Relief under Part 4 of this schedule (acquisition by property trader from individual where chain of transactions breaks down) is withdrawn if the property trader—
- (a) spends more than the permitted amount on refurbishment of the old dwelling,
 - (b) grants a lease or licence of the old dwelling, or
 - (c) permits any of its principals or employees (or any person connected with any of its principals or employees) to occupy the old dwelling.
- 17 Paragraph 16(b) does not apply to the grant of a lease or licence to the individual for a period of no more than 6 months.

PART 6

INTERPRETATION

Meaning of “dwelling” and “new dwelling”

18 “Dwelling” includes land occupied and enjoyed with the dwelling as its garden or
 5 grounds.

19 A building or part of a building is a “new dwelling” if—

(a) it has been constructed for use as a single dwelling and has not previously been occupied, or

(b) it has been adapted for use as a single dwelling and has not been occupied since
 10 its adaptation.

Meaning of “permitted area”

20 “The permitted area”, in relation to a dwelling, means land occupied and enjoyed with the dwelling as its garden or grounds that does not exceed—

(a) an area (inclusive of the site of the dwelling) of 0.5 of a hectare, or

(b) such larger area as is required for the reasonable enjoyment of the dwelling as a
 15 dwelling having regard to its size and character.

21 Where paragraph 20(b) applies, the permitted area is taken to consist of that part of the land that would be the most suitable for occupation and enjoyment with the dwelling as its garden or grounds if the rest of the land were separately occupied.

Meaning of “acquisition” and “market value” in relation to dwelling and permitted area

22 References in this schedule to—

(a) the acquisition of a dwelling are to the acquisition, by way of grant or transfer, of a major interest in the dwelling,

(b) the market value of a dwelling and of the permitted area are, respectively, to the
 25 market value of that major interest in the dwelling and of that interest so far as it relates to that area.

Meaning of “house-building company”

23 A “house-building company” means a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings.

24 References in this schedule to such a company include any company connected with it.

Meaning of “property trader” and “principal”

25 (1) A “property trader” means an entity listed in sub-paragraph (2) that carries on the business of buying and selling dwellings.

(2) The entities are—

(a) a company,

- (b) a limited liability partnership,
- (c) a partnership whose partners are all either companies or limited liability partnerships.

(3) A “principal”—

- (a) in relation to a company, means a director,
- (b) in relation to a limited liability partnership, means a member,
- (c) in relation to a partnership mentioned in sub-paragraph (2)(c) means a partner or a principal of a partner.

26 For the purposes of this schedule—

- (a) anything done by or in relation to a company connected with a property trader is treated as done by or in relation to that property trader, and
- (b) references to the principals or employees of a property trader include the principals or employees of any such company.

Meaning of “refurbishment” and “the permitted amount”

27 “Refurbishment” of a dwelling means the carrying out of works that enhance or are intended to enhance the value of the dwelling, but does not include—

- (a) cleaning the dwelling, or
- (b) works required solely for the purpose of ensuring that the dwelling meets minimum safety standards.

28 The “permitted amount”, in relation to the refurbishment of a dwelling, is set out in the following table—

Consideration for acquisition of the dwelling	Permitted amount
Not more than £200,000	£10,000
More than £200,000 but not more than £400,000	5% of the consideration
More than £400,000	£20,000

SCHEDULE 5 (introduced by section 27)

MULTIPLE DWELLINGS RELIEF

PART 1

INTRODUCTORY

Overview of relief

1 (1) This schedule provides for relief in the case of certain land transactions involving multiple dwellings.

(2) It is arranged as follows—

Part 2 identifies the transactions to which this schedule applies,

Part 3 defines key terms,
 Part 4 describes the relief available if a claim is made,
 Part 5 provides for withdrawal of the relief,
 Part 6 contains rules to determine what counts as a dwelling.

5

PART 2

TRANSACTIONS TO WHICH THIS SCHEDULE APPLIES

The rule

2 This schedule applies to relevant transactions.

3 A relevant transaction is a transaction that is—

10

- (a) within paragraph 4 or paragraph 5, and
- (b) not excluded by paragraph 6.

Single transaction relating to multiple dwellings

4 A transaction is within this paragraph if its main subject-matter consists of—

15

- (a) an interest in at least two dwellings, or
- (b) an interest in at least two dwellings and other property.

Linked transactions relating to multiple dwellings

5 A transaction is within this paragraph if—

(a) its main subject-matter consists of—

20

- (i) an interest in a single dwelling, or
- (ii) an interest in a single dwelling and other property,
- (b) it is one of a number of linked transactions, and

(c) the main subject-matter of at least one of the other linked transactions consists of—

25

- (i) an interest in some other dwelling or dwellings, or
- (ii) an interest in some other dwelling or dwellings and other property.

Excluded transactions

6 A transaction is excluded by this paragraph if—

- (a) relief under schedule 9 (crofting community right to buy) is available for it, or
- (b) relief under schedule 10 (group relief), 11 (reconstruction relief and acquisition relief) or 13 (charities relief)—

30

- (i) is available for it, or
- (ii) has been withdrawn from it.

PART 3

KEY TERMS

Consideration attributable to dwellings and remaining property

7 In relation to a relevant transaction—

- 5 (a) the consideration attributable to dwellings is so much of the chargeable consideration for the transaction as is attributable to the dwellings,
- (b) the consideration attributable to remaining property is the chargeable consideration for the transaction less the consideration attributable to dwellings.

Dwellings

- 10 8 “The dwellings” are, in relation to a relevant transaction, the dwelling or dwellings that are, or are part of, the main subject-matter of the transaction.

Interest in a dwelling

9 A reference in this schedule to an interest in a dwelling is to any chargeable interest in or over a dwelling.

- 15 10 But, in the case of a dwelling subject to a lease granted for an initial term of more than 21 years, any interest that is a superior interest in relation to the lease is to be ignored in determining whether a transaction is a relevant transaction.

11 For the purposes of paragraph 10, a lease (A) is a superior interest in relation to another lease (B) if B is a sublease of A.

PART 4

THE RELIEF

Calculation of relief

12 The amount of tax chargeable in relation to a relevant transaction is—

$$(DT \times ND) + RT$$

25 where—

DT is the tax due in relation to a dwelling,

ND is the number of dwellings that are, or are part of, the main subject-matter of the transaction, and

RT is the tax due in relation to remaining property.

- 30 13 However, if the result of paragraph 12 would be that the tax chargeable in relation to the transaction is less than the minimum prescribed amount, the tax chargeable is that amount.

- 14 The minimum prescribed amount is such proportion of the tax that would be chargeable in relation to the transaction but for the relief as may be prescribed by the Scottish Ministers by order.
- 35

Tax due in relation to a dwelling

15 The tax due in relation to a dwelling is determined as follows.

Step 1

Find the total consideration attributable to dwellings, that is—

- 5 (a) the consideration attributable to dwellings for the transaction, or
- (b) where the transaction is one of a number of linked transactions, the sum of—
 - (i) the consideration attributable to dwellings for the transaction, and
 - (ii) the consideration attributable to dwellings for all other relevant transactions.

10 *Step 2*

Divide the total consideration attributable to dwellings by total dwellings.

“Total dwellings” is the total number of dwellings by reference to which the total consideration attributable to dwellings is calculated.

Step 3

15 Calculate the amount of tax that would be due in relation to the relevant transaction were—

- (a) the chargeable consideration equal to the result obtained in Step 2,
- (b) the transaction a residential property transaction, and
- (c) the transaction not a linked transaction.

20 The result is the tax due in relation to a dwelling.

Tax due in relation to remaining property

16 The tax due in relation to remaining property is determined as follows.

Step 1

25 Calculate the amount of tax that would be due in respect of the transaction but for this schedule.

Step 2

Divide the consideration attributable to remaining property by the chargeable consideration for the transaction.

Step 3

30 Multiply the amount calculated in Step 1 by the fraction reached in Step 2.

The result is the tax due in relation to remaining property.

General

17 If the whole or part of the chargeable consideration for a relevant transaction is rent, this Part of this schedule has effect subject to section 55.

35 18 “Attributable” means attributable on a just and reasonable basis.

PART 5

WITHDRAWAL OF RELIEF

Full withdrawal of relief

- 19 Relief under this schedule is withdrawn in relation to a relevant transaction if—
- 5 (a) an event occurs in the relevant period, and
- (b) had the event occurred immediately before the effect date of the transaction, the transaction would not have been a relevant transaction.
- 20 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the transaction but for the relief.

Partial withdrawal of relief

- 21 Relief under this schedule is partially withdrawn in relation to a relevant transaction if—
- (a) an event occurs in the relevant period, and
- (b) had the event occurred immediately before the effect date of the transaction—
- 15 (i) the transaction would have been a relevant transaction, but
- (ii) more tax would have been payable in respect of the transaction.
- 22 Where relief is partially withdrawn, tax is chargeable on the transaction as if the event had occurred immediately before the effective date of the transaction.
- 23 In that case, the tax so chargeable must be calculated by reference to the tax rates and tax bands in force at the effective date of the transaction.

Relevant period

- 24 “The relevant period” means the shorter of—
- (a) the period of 3 years beginning with the effective date of the transaction, and
- (b) the period beginning with the effective date of the transaction and ending with the date on which the buyer disposes of the dwelling, or the dwellings, to a person
- 25 who is not connected with the buyer.
- 25 In relation to a transaction effected on completion of a contract that was substantially performed before completion, paragraph 24 applies as if references to the effective date of the transaction were to the date on which the contract was substantially performed.

Interpretation

- 26 In this Part of this schedule, “event” includes any change of circumstance or change of plan.

PART 6

WHAT COUNTS AS A DWELLING

27 This Part of this schedule sets out rules for determining what counts as a dwelling for the purposes of this schedule.

5 28 A building or part of a building counts as a dwelling if—

- (a) it is used or suitable for use as a single dwelling, or
- (b) it is in the process of being constructed or adapted for such use.

29 Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on such land) is taken to be part of that dwelling.

10 30 Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.

31 The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if—

- 15 (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
- (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
- 20 (c) construction or adaptation of the building, or the part of a building, has not begun by the time the contract is substantially performed.

32 In paragraph 31, “relevant deeming provision” means section 10 or 11.

33 Subsections (3) to (6) of section 58 apply for the purposes of this Part of this schedule as they apply for the purposes of subsection (1)(a) of that section.

SCHEDULE 6

(introduced by section 27)

RELIEF FOR CERTAIN ACQUISITIONS BY REGISTERED SOCIAL LANDLORDS

The relief

1 A land transaction under which the buyer is a registered social landlord is exempt from charge if the qualifying conditions are met.

The qualifying conditions

2 The qualifying conditions are—

- (a) that the registered social landlord is controlled by its tenants,
- (b) that the seller is one of the following—
 - 35 (i) a registered social landlord,
 - (ii) the Scottish Ministers,
 - (iii) a local authority, and

(c) that the transaction is funded with the assistance of a grant or other financial assistance—

- (i) made or given by way of a distribution pursuant to section 25 of the National Lottery etc. Act 1993 (c.39) (application of money by distributing bodies), or
- (ii) under section 2 of the Housing (Scotland) Act 1988 (c.43) (general functions of the Scottish Ministers).

Landlord controlled by tenants

3 The reference in paragraph 2(a) to a registered social landlord controlled by its tenants is
 10 to a registered social landlord the majority of whose board members are tenants occupying properties owned or managed by it.

4 For the purposes of paragraph 3, “board member” is to be construed as follows—

Type of registered social landlord	Board member
Company	A director of the company
Body corporate whose affairs are managed by its members	A member
Body of trustees	A trustee
None of the above	A member of the committee of management or other body to which is entrusted the direction of the affairs of the registered social landlord

SCHEDULE 7
(introduced by section 27)

ALTERNATIVE PROPERTY FINANCE RELIEF

PART 1

INTRODUCTORY

Overview

1 (1) This schedule makes provision for relief in the case of certain land transactions connected to alternative property finance arrangements.

30 (2) It is arranged as follows—

Part 2 identifies the alternative property finance arrangements that are relieved,

Part 3 makes provision limiting the arrangements that can be relieved,

Part 4 provides for the circumstances in which the chargeable interest acquired by a financial institution under the arrangements is an exempt interest, and

35 Part 5 defines expressions used in this schedule.

PART 2

ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS RELIEVED

Land sold to financial institution and leased to person

2 Paragraphs 3 to 6 apply where arrangements are entered into between a person and a
 5 financial institution under which the institution—

- (a) purchases a major interest in land (“the first transaction”),
- (b) grants to the person out of that interest a lease (if the interest acquired is the interest of the owner) or a sub-lease (if the interest acquired is the tenant’s right over or interest in a property subject to a lease) (“the second transaction”), and
- 10 (c) enters into an agreement under which the person has a right to require the institution to transfer the major interest purchased by the institution under the first transaction.

3 The first transaction is exempt from charge if the seller is—

- (a) the person, or
- 15 (b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 2 entered into between it and the person.

4 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).

20 5 A transfer to the person that results from the exercise of the right mentioned in paragraph 2(c) (“the third transaction”) is exempt from charge if—

- (a) the provisions of this Act relating to the first and second transactions are complied with, and
- (b) at all times between the second and third transactions—
 - 25 (i) the interest purchased under the first transaction is held by a financial institution, and
 - (ii) the lease or sub-lease granted under the second transaction is held by the person.

6 The agreement mentioned in paragraph 2(c) is not to be treated—

- 30 (a) as substantially performed unless and until the third transaction is entered into (and accordingly section 14 does not apply), or
- (b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).

Land sold to financial institution and person in common

35 7 Paragraphs 8 to 12 apply where arrangements are entered into between a person and a financial institution under which—

- (a) the institution and the person purchase a major interest in land as common owners (“the first transaction”),

(b) the institution and the person enter into an agreement under which the person has a right to occupy the land exclusively (“the second transaction”), and

(c) the institution and the person enter into an agreement under which the person has a right to require the institution to transfer to the person (in one transaction or a series of transactions) the whole interest purchased under the first transaction.

8 The first transaction is exempt from charge if the seller is—

(a) the person, or

(b) another financial institution by whom the interest was acquired under arrangements of the kind mentioned in paragraph 7 entered into between it and the person.

9 The second transaction is exempt from charge if the provisions of this Act relating to the first transaction are complied with (including payment of any tax chargeable).

10 Any transfer to the person that results from the exercise of the right mentioned in paragraph 7(c) (“a further transaction”) is exempt from charge if—

(a) the provisions of this Act relating to the first transaction are complied with, and

(b) at all times between the first and the further transaction—

(i) the interest purchased under the first transaction is held by a financial institution and the person as common owners, and

(ii) the land is occupied by the person under the agreement mentioned in paragraph 7(b).

11 The agreement mentioned in paragraph 7(c) is not to be treated—

(a) as substantially performed unless and until the whole interest purchased by the institution under the first transaction has been transferred (and accordingly section 14 does not apply), or

(b) as a distinct land transaction by virtue of section 12 (options and rights of pre-emption).

12 A further transaction that is exempt from charge by virtue of paragraph 10 is not a notifiable transaction unless the transaction involves the transfer to the person of the whole interest purchased by the institution under the first transaction, so far as not transferred by a previous further transaction.

Land sold to financial institution and re-sold to person

13 Paragraphs 14 and 15 apply where arrangements are entered into between a person and a financial institution under which—

(a) the institution—

(i) purchases a major interest in land (“the first transaction”), and

(ii) sells that interest to the person (“the second transaction”), and

(b) the person grants the institution a standard security over that interest.

14 The first transaction is exempt from charge if the seller is—

(a) the person, or

- (b) another financial institution by whom the interest was acquired under other arrangements of the kind mentioned in paragraph 2 or 7 entered into between it and the person.

15 The second transaction is exempt from charge if the financial institution complies with the provisions of this Act relating to the first transaction (including the payment of any tax chargeable on a chargeable consideration that is not less than the market value of the interest and, in the case of the grant of a lease, the rent).

PART 3

ALTERNATIVE PROPERTY FINANCE: ARRANGEMENTS NOT RELIEVED

No relief where first transaction already relieved

16 Paragraphs 2 to 12 do not apply to arrangements in relation to which group relief, reconstruction relief or acquisition relief—

- (a) is available for the first transaction, or
 (b) has been withdrawn from that transaction.

No relief where arrangements to transfer control of financial institution

17 Paragraphs 2 to 12 do not apply to alternative finance arrangements if those arrangements, or any connected arrangements, include arrangements for a person to acquire control of the relevant financial institution.

18 That includes arrangements for a person to acquire control of the relevant financial institution only if one or more conditions are met (such as the happening of an event or doing of an act).

19 In paragraphs 17 and 18—

“alternative finance arrangements” means the arrangements referred to in paragraphs 2 and 7,

“connected arrangements” means any arrangements entered into in connection with the making of the alternative finance arrangements (including arrangements involving one or more persons who are parties to the alternative finance arrangements),

“relevant financial institution” means the financial institution which enters into the alternative finance arrangements.

20 Section 1124 of the Corporation Tax Act 2010 (c.4) applies for determining who has control of the relevant financial institution.

PART 4

EXEMPT INTEREST

Interest held by financial institution an exempt interest

21 An interest held by a financial institution as a result of the first transaction within the meaning of paragraph 2(a) or 7(a) is an exempt interest for the purposes of the tax.

22 That interest ceases to be an exempt interest if—

- (a) the lease or agreement mentioned in paragraph 2(b) or 7(b) ceases to have effect, or
- (b) the right under paragraph 2(c) or 7(c) ceases to have effect or becomes subject to a restriction.

- 23 Paragraph 21 does not apply if the first transaction is exempt from charge by virtue of schedule 10 (group relief) or 11 (reconstruction and acquisition reliefs).
- 24 Paragraph 21 does not make an interest exempt in respect of—
- (a) the first transaction itself, or
 - (b) a third transaction or a further transaction within the meaning of paragraph 5 or 10.

PART 5

INTERPRETATION

Interpretation

- 25 (1) In this schedule “financial institution” has the meaning given by section 564B of the Income Tax Act 2007 (c.3).
- (2) For this purpose section 564B(1) applies as if paragraph (d) were omitted.
- 26 In this schedule—
- “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable),
- references to a person are to be read, in relation to times after the death of the person concerned, as references to the person’s personal representatives.

SCHEDULE 8

(introduced by section 27)

RELIEF FOR ALTERNATIVE FINANCE INVESTMENT BONDS

The relief

- 1 The Scottish Ministers may make regulations granting relief for land transactions connected to alternative finance investment bonds.
- 2 The relief may take the form of—
- (a) an exemption from charge,
 - (b) a reduction in the amount of tax chargeable, or
 - (c) such other form as the Scottish Ministers consider appropriate.
- 3 Regulations under this schedule may modify any enactment (including this Act).
- 4 Before making regulations under this schedule, the Scottish Ministers must consult such representatives of financial institutions as they consider appropriate.

Withdrawal of relief

Regulations under this schedule may provide for—

- (a) the circumstances in which the relief may be withdrawn or partly withdrawn, and
- (b) the tax chargeable where the relief is so withdrawn.

Interpretation

- 5 In this schedule, “alternative finance investment bond” means arrangements to which section 564G of Income Tax Act 2007 (c.3) or section 151N of the Taxation of Chargeable Gains Act 1992 (c.12) (investment bond arrangements) applies.

SCHEDULE 9 *(introduced by section 27)*

CROFTING COMMUNITY RIGHT TO BUY RELIEF

The relief

- 1 This schedule applies where—
- (a) a chargeable transaction is entered into in pursuance of the crofting community right to buy, and
 - (b) under that transaction two or more crofts are being bought.
- 15 2 The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.
- 3 The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

Interpretation

- 20 4 In this schedule “crofting community right to buy” means the right exercisable by a crofting community body under Part 3 of the Land Reform (Scotland) Act 2003 (asp 2).

SCHEDULE 10 *(introduced by section 27)*

GROUP RELIEF

PART 1

INTRODUCTORY

Overview

- 1 (1) This schedule provides for relief for certain transactions involving companies.
- (2) It is arranged as follows—
- 30 Part 2 provides for when relief is available,
 Part 3 provides for when the relief is withdrawn,
 Part 4 defines expressions used in this schedule.

PART 2

THE RELIEF

The relief

- 2 A land transaction is exempt from charge if the seller and buyer are companies that at
5 the effective date of the transaction are members of the same group.

Restrictions on availability of relief

- 3 Relief under this schedule is not available if at the effective date of the transaction there
10 are arrangements in existence by virtue of which, at that or some later time, a person has
or could obtain, or any persons together have or could obtain, control of the buyer but
not of the seller.

- 4 Paragraph 3 does not apply to arrangements to which paragraph 9 or 10 applies.

- 5 Relief under this schedule is not available if the transaction is effected in pursuance of,
or in connection with, arrangements under which—

15 (a) the consideration, or any part of the consideration, for the transaction is to be
provided or received (directly or indirectly) by a person other than a group
company, or

(b) the seller and the buyer are to cease to be members of the same group by reason of
the buyer ceasing to be a 75% subsidiary of the seller or a third company.

- 6 Arrangements are within paragraph 5(a) if under them the seller or the buyer, or another
20 group company, is to be enabled to provide any of the consideration, or is to part with
any of it, by or in consequence of the carrying out of a transaction or transactions
involving, or any of them involving, a payment or other disposition by a person other
than a group company.

- 7 Paragraph 5(b) does not apply to arrangements to which paragraph 10 applies.

- 25 8 Relief under this schedule is not available if the transaction—

(a) is not effected for bona fide commercial reasons, or

(b) forms part of arrangements the main purpose, or one of the main purposes, of
which is the avoidance of liability to the tax.

Arrangements that do not restrict availability of relief

- 30 9 This paragraph applies to arrangements entered into with a view to an acquisition of
shares by a company (“the acquiring company”)—

(a) in relation to which section 75 of the Finance Act 1986 (c.41) (stamp duty:
acquisition relief) will apply,

(b) in relation to which the conditions for relief under that section will be met, and

35 (c) as a result of which the buyer will be a member of the same group as the acquiring
company.

- 10 This paragraph applies to arrangements in so far as they are for the purpose of
facilitating a transfer of the whole or part of the business of a company to another
company in relation to which—

- (a) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) is intended to apply, and
- (b) the conditions for relief under that section are intended to be met.

Interpretation

11 In this Part of this schedule—

“control” has the meaning given by section 1124 of the Corporation Tax Act 2010 (c.4),

“group company” means a company that at the effective date of the transaction is a member of the same group as the seller and the buyer.

PART 3

WITHDRAWAL OF RELIEF

Overview

12 This Part of this schedule is arranged as follows—

paragraphs 13 to 19 provide for circumstances where relief under this schedule is withdrawn,

paragraphs 20 to 31 provide for circumstances in which, despite paragraphs 13 to 19, relief is not withdrawn, and

paragraphs 32 to 40 provide for the application of paragraphs 13 to 31 where there are successive transactions.

Withdrawal of relief

13 Relief under this schedule is withdrawn or partially withdrawn where paragraphs 14 and 15 apply.

14 This paragraph applies where the buyer in the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”) ceases to be a member of the same group as the seller—

- (a) before the end of the period of 3 years beginning with the effective date of the transaction, or
- (b) in pursuance of, or in connection with, arrangements made before the end of that period.

15 This paragraph applies where, at the time the buyer ceases to be a member of the same group as the seller (“the relevant time”), it or a relevant associated company holds a chargeable interest—

- (a) that was acquired by the buyer under the relevant transaction, or
- (b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

Amount of tax chargeable where relief withdrawn

16 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 17.

17 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the 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, or
- (b) if the acquisition was the grant of a lease, the rent.

Amount of tax chargeable where relief partially withdrawn

18 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 17.

19 An “appropriate proportion” means an appropriate proportion having regard to—

- (a) the subject-matter of the relevant transaction, and
- (b) what is held at the relevant time by the buyer or, as the case may be, by the buyer and its relevant associated companies.

Case where relief not withdrawn: winding up

20 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller by reason of anything done for the purposes of, or in the course of, winding up the seller or another company that is above the seller in the group structure.

Cases where relief not withdrawn: stamp duty reliefs

21 Relief under this schedule is not withdrawn where—

- (a) the buyer ceases to be a member of the same group as the seller as a result of an acquisition of shares by another company (“the acquiring company”) in relation to which—

- (i) section 75 of the Finance Act 1986 (c.41) (stamp duty: acquisition relief) applies, and
 - (ii) the conditions for relief under that section are met, and

- (b) the buyer is immediately after that acquisition a member of the same group as the acquiring company.

22 Relief under this schedule is not withdrawn where—

- (a) the buyer ceases to be a member of the same group as the seller as a result of the transfer of the whole or part of the seller’s business to another company (“the acquiring company”) in relation to which—

- (i) section 96 of the Finance Act 1997 (c.16) (stamp duty relief: demutualisation of insurance companies) applies, and
 - (ii) the conditions for relief under that section are met, and

(b) the buyer is immediately after that transfer a member of the same group as the acquiring company.

23 But where, in a case to which paragraph 21 or 22 applies—

(a) the buyer ceases to be a member of the same group as the acquiring company in the circumstances mentioned in paragraph 24, and

(b) at the time the buyer ceases to be a member of the same group as the acquiring company, it or a relevant associated company holds a chargeable interest to which paragraph 25 applies,

this schedule applies as if the buyer had then ceased to be a member of the same group as the seller.

24 The circumstances referred to in paragraph 23(a) are that the buyer ceases to be a member of the same group as the acquiring company—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

25 This paragraph applies to a chargeable interest—

(a) that was acquired by the buyer under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction for which relief under this schedule was available but not claimed.

Case where relief not withdrawn: seller leaves group

26 Relief under this schedule is not withdrawn where the buyer ceases to be a member of the same group as the seller because the seller leaves the group.

27 The seller is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—

(a) the seller, or

(b) another company that is above the seller in the group structure and as a result of the transaction ceases to be a member of the same group as the buyer.

28 But if there is a change in the control of the buyer after the seller leaves the group, paragraphs 13 to 19 and 22 to 25 have effect as if the buyer had then ceased to be a member of the same group as the seller.

29 Paragraph 28 does not apply where—

(a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and

(b) the other persons who controlled the buyer before the change continue to do so.

30 There is a change in the control of the buyer if—

(a) a person who controls the buyer (alone or with others) ceases to do so,

- (b) a person obtains control of the buyer (alone or with others), or
- (c) the buyer is wound up.

31 For the purposes of paragraph 30 a person does not control, or obtain control of, the buyer if that person is under the control of another person or other persons.

5 *Withdrawal of relief in certain cases involving successive transactions*

32 Where the following conditions are met, paragraphs 13 to 31 have effect in relation to the relevant transaction as if the seller in relation to the earliest previous transaction falling within paragraph 37 were the seller in relation to the relevant transaction.

33 The first condition is that there is a change in control of the buyer.

10 34 The second condition is that the change occurs—

- (a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), or

15 (b) in pursuance of, or in connection with, arrangements made before the end of that period.

35 The third condition is that, apart from paragraph 32, relief under this schedule in relation to the relevant transaction would not be withdrawn under paragraph 13.

36 The fourth condition is that any previous transaction falls within paragraph 37.

37 A previous transaction falls within this paragraph if—

20 (a) the previous transaction is exempt from charge by virtue of this schedule or schedule 11 (reconstruction relief and acquisition relief),

- (b) the effective date of the previous transaction is less than 3 years before the date of the change mentioned in the first condition,

25 (c) the chargeable interest acquired under the relevant transaction by the buyer 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 buyer in relation to the previous transaction, and

30 (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 this schedule or schedule 11 (reconstruction relief and acquisition relief).

38 Paragraph 33 does not apply where—

35 (a) there is a change in the control of the buyer because a loan creditor (within the meaning given by section 453 of the Corporation Tax Act 2010 (c.4)) obtains control of, or ceases to control, the buyer, and

- (b) the other persons who controlled the buyer before the change continue to do so.

39 If two or more transactions effected at the same time are the earliest previous transactions falling within paragraph 37, the reference in paragraph 32 to the seller in relation to the earliest previous transaction is a reference to the persons who are the sellers in relation to the earliest previous transactions.

40

40 There is a change in the control of a company if—

- (a) a 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.

Interpretation

- 5 41 For the purposes of paragraphs 20 and 27 a company is “above” the seller in the group structure if the seller, or another company that is above the seller in the group structure, is a 75% subsidiary of the company.
- 42 In this Part of this schedule—
- 10 “control” is to be interpreted in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4) (but see paragraph 31),
- “relevant associated company”, in relation to the buyer, means a company that—
- (a) is a member of the same group as the buyer immediately before the buyer ceases to be a member of the same group as the seller, and
 - (b) ceases to be a member of the same group as the seller in consequence of the buyer so ceasing.
- 15

PART 4

INTERPRETATION

When are companies members of the same group?

- 20 43 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

When is a company a subsidiary of another company?

- 44 A company (A) is the 75% subsidiary of another company (B) if B—
- (a) is beneficial owner of not less than 75% of the ordinary share capital of A,
 - (b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and
 - (c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.
- 25
- 45 For the purposes of paragraph 44(a)—
- (a) the ownership referred to is ownership either directly or through another company or companies,
 - (b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).
- 30
- 46 “Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.
- 35

47 Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 44(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.

5 48 But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 44(b) and (c).

Other definitions

49 In this schedule—

“arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable,

10 “company” means a body corporate.

SCHEDULE 11
(introduced by section 27)

RECONSTRUCTION RELIEF AND ACQUISITION RELIEF

PART 1

15 INTRODUCTORY

Overview

1 (1) This schedule provides for relief for certain transactions in connection with the reconstruction and acquisition of companies.

(2) It is arranged as follows—

20 Part 2 provides for when reconstruction relief is available,

Part 3 provides for when acquisition relief is available,

Part 4 provides for when the relief is withdrawn,

Part 5 defines expressions used in this schedule.

PART 2

25 RECONSTRUCTION RELIEF

The relief

2 A land transaction is exempt from charge if—

(a) it is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and

30 (b) the qualifying conditions are met.

Qualifying conditions

3 The qualifying conditions are—

- (a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”) in pursuance of a scheme for the reconstruction of the target company,
- (b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to all shareholders of the target company,
- (c) that after the acquisition has been made—
 - (i) each shareholder of each of the companies is a shareholder of the other, and
 - (ii) the proportion of shares of one of the companies held by any shareholder is the same, or as nearly as may be the same, as the proportion of shares of the other company held by that shareholder,
- (d) that the acquisition—
 - (i) is effected for bona fide commercial reasons, and
 - (ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in the qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of the assumption or discharge by the acquiring company of liabilities of the target company.

If, immediately before the acquisition, the target company or the acquiring company holds any of its own shares, the shares are treated for the purposes of qualifying conditions (c) and (d) as having been cancelled before the acquisition (and, accordingly, the company is to be treated as if it were not a shareholder of itself).

PART 3

ACQUISITION RELIEF

The relief

(1) This paragraph applies where—

- (a) a land transaction is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking, and
- (b) the qualifying conditions are met.

- (2) The tax chargeable in respect of the transaction is the prescribed proportion of the tax that would otherwise be chargeable but for this paragraph.
- (3) The prescribed proportion is such proportion as may be prescribed by the Scottish Ministers by order.

Qualifying conditions

The qualifying conditions are—

- (a) that a company (“the acquiring company”) acquires the whole or part of the undertaking of another company (“the target company”),

(b) that the consideration for the acquisition consists wholly or partly of the issue of non-redeemable shares in the acquiring company to—

- (i) the target company, or
- (ii) all or any of the target company's shareholders,

(c) that the acquiring company is not associated with another company that is a party to arrangements with the target company relating to shares of the acquiring company issued in connection with the transfer of the undertaking or part,

(d) 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,

(e) that the acquisition—

- (i) is effected for bona fide commercial reasons, and
- (ii) does not form part of arrangements the main purpose, or one of the main purposes, of which is the avoidance of liability to the tax.

8 Where the consideration for the acquisition consists partly of the issue of non-redeemable shares as mentioned in qualifying condition (b), that condition is met only if the rest of the consideration consists wholly of—

- (a) cash not exceeding 10% of the nominal value of the non-redeemable shares so issued,
- (b) the assumption or discharge by the acquiring company of liabilities of the target company, or
- (c) both of those things.

Interpretation

9 For the purposes of qualifying condition (c)—

- (a) companies are associated if one has control of the other or both are controlled by the same person or person,
- (b) “control” is to be construed in accordance with section 1124 of the Corporation Tax Act 2010 (c.4).

10 In this Part of this schedule, “trade” includes any venture in the nature of trade.

PART 4

WITHDRAWAL OF RELIEF

Overview

11 This Part of this schedule is arranged as follows—

paragraphs 12 to 14 provide for circumstances in which relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn,

paragraphs 15 to 21 provide for circumstances in which, despite paragraphs 12 to 14, relief is not withdrawn,

paragraphs 22 to 28 provide for the withdrawal of relief, which would otherwise not be withdrawn by virtue of paragraph 17 or 19, on the occurrence of certain subsequent events,

paragraphs 29 to 32 provide for how the tax chargeable is determined where relief is withdrawn or partially withdrawn.

Withdrawal of relief

12 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn where paragraphs 13 and 14 apply.

13 This paragraph applies where control of the acquiring company changes—

(a) before the end of the period of 3 years beginning with the effective date of the transaction which is exempt from charge by virtue of Part 2, or is subject to a reduced amount of tax by virtue of Part 3, of this schedule (“the relevant transaction”), or

(b) in pursuance of, or in connection with, arrangements made before the end of that period.

14 This paragraph applies where, at the time the control of the acquiring company changes (“the relevant time”), it or a relevant associated company holds a chargeable interest—

(a) that was acquired by the acquiring company under the relevant transaction, or

(b) that is derived from a chargeable interest so acquired,

and that has not subsequently been acquired at market value under a chargeable transaction in relation to which relief under this schedule was available but was not claimed.

Case where relief not withdrawn: change of control of acquiring company as result of transaction connected to divorce etc.

15 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that is effected as mentioned in—

(a) any of paragraphs (a) to (d) of paragraph 4 of schedule 1 (transactions connected with divorce etc.), or

(b) any of paragraphs (a) to (d) of paragraph 5 of schedule 1 (transactions connected with dissolution of civil partnership etc.).

16 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of a share transaction that—

(a) is effected as mentioned in paragraph 7(1) of schedule 1, and

(b) meets the conditions in paragraph 7(2) of that schedule (variation of testamentary dispositions etc.).

Case where relief not withdrawn: exempt intra-group transfer

17 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the acquiring company changes as a result of an exempt intra-group transfer.

18 But see paragraphs 22 to 24 for the effect of a subsequent non-exempt transfer.

Case where relief not withdrawn: share acquisition relief

19 Relief under Part 2 or Part 3 of this schedule is not withdrawn where control of the
5 acquiring company changes as a result of a transfer of shares to another company in
relation to which share acquisition relief applies.

20 But see paragraphs 25 to 28 for the effect of a change in the control of that other
company.

Case where relief not withdrawn: controlling loan creditor

21 Relief under Part 2 or Part 3 of this schedule is not withdrawn where—

- 10 (a) control of the acquiring company changes as a result of a loan creditor (within the
meaning of section 453 of the Corporation Tax Act 2010 (c.4)) becoming, or
ceasing to be, treated as having control of the company, and
- (b) the other persons who were previously treated as controlling the company
continue to be so treated.

15 *Withdrawal of relief on subsequent non-exempt transfer*

22 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—

- (a) control of the acquiring company changes as a result of an exempt intra-group
transfer, and
- (b) paragraphs 23 and 24 apply.

20 23 This paragraph applies where a company holding shares in the acquiring company to
which the exempt intra-group transfer related, or that are derived from shares to which
that transfer related, ceases to be a member of the same group as the target company—

- 25 (a) before the end of the period of 3 years beginning with the effective date of the
transaction which is exempt from charge by virtue of Part 2, or is subject to a
reduced amount of tax by virtue of Part 3, of this schedule (“the relevant
transaction”), or
- (b) in pursuance of, or in connection with, arrangements made before the end of that
period.

24 This paragraph applies where the acquiring company or a relevant associated company,
30 at that time (“the relevant time”), holds a chargeable interest—

- (a) that was transferred to the acquiring company by the relevant transaction, or
- (b) that is derived from an interest so transferred,

35 and that has not subsequently been transferred at market value under a chargeable
transaction in relation to which relief under Part 2 or Part 3 of this schedule was
available but was not claimed.

Withdrawal of relief where share acquisition relief applied but control of company subsequently changes

- 25 Relief under Part 2 or Part 3 of this schedule is withdrawn or partially withdrawn if—
- 5 (a) control of the acquiring company changes as a result of a transfer of shares to another company in relation to which share acquisition relief applies, and
- (b) paragraphs 26 to 28 apply.
- 26 This paragraph applies where control of the other company mentioned in paragraph 25(a) changes—
- 10 (a) before the end of the period of 3 years beginning with the effective date of the relevant transaction, or
- (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- 27 This paragraph applies where, at the time control of that other company changes, it holds shares transferred to it by the transfer mentioned in paragraph 25(a), or any shares derived from shares so transferred.
- 15 28 This paragraph applies where the acquiring company or a relevant associated company, at that time (“the relevant time”), holds a chargeable interest—
- (a) that was transferred to the acquiring company by the relevant transaction, or
- (b) that is derived from an interest so transferred,
- 20 and that has not subsequently been transferred at market value under a chargeable transaction in relation to which relief under Part 2 or Part 3 of this schedule was available but was not claimed.

Amount of tax chargeable where relief withdrawn

- 25 29 Where relief is withdrawn, the amount of tax chargeable is determined in accordance with paragraph 30.
- 30 30 The amount chargeable is the tax that would have been chargeable in respect of the relevant transaction but for the 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,
- 30 (b) if the acquisition was the grant of a lease, the rent.

Amount of tax chargeable where relief partially withdrawn

- 31 31 Where relief is partially withdrawn, the tax chargeable is an appropriate proportion of the amount determined in accordance with paragraph 30.
- 32 32 An “appropriate proportion” means an appropriate proportion having regard to—
- 35 (a) the subject-matter of the relevant transaction, and
- (b) what is held at the relevant time by the acquiring company or, as the case may be, by that company and any relevant associated companies.

Interpretation

33 In paragraphs 19 and 25—

(a) “share acquisition relief” means relief under section 77 of the Finance Act 1986 (c.41), and

(b) a transfer is one in relation to which that relief applies if an instrument effecting the transfer is exempt from stamp duty by virtue of that provision.

34 In this Part of this schedule, references to control of a company changing are to the company becoming controlled—

(a) by a different person,

(b) by a different number of persons, or

(c) by two or more persons at least one of whom is not the person, or one of the persons, by whom the company was previously controlled.

35 In this Part of this schedule—

“control” is to be construed in accordance with sections 450 and 451 of the Corporation Tax Act 2010 (c.4),

“exempt intra-group transfer” means a transfer of shares effected by an instrument that is exempt from stamp duty by virtue of section 42 of the Finance Act 1930 (c.28) or section 11 of the Finance Act (Northern Ireland) 1954 (c.23 (NI)) (transfers between associated bodies corporate),

“relevant associated company”, in relation to the acquiring company, means a company—

(a) that is controlled by the acquiring company immediately before the control of that company changes, and

(b) of which control changes in consequence of the change of control of that company.

PART 5

INTERPRETATION

When are companies members of the same group?

36 Companies are members of the same group if one is the 75% subsidiary of the other or both are 75% subsidiaries of a third company.

When is a company a subsidiary of another company?

37 A company (A) is the 75% subsidiary of another company (B) if B—

(a) is beneficial owner of not less than 75% of the ordinary share capital of A,

(b) is beneficially entitled to not less than 75% of any profits available for distribution to equity holders of A, and

(c) would be beneficially entitled to not less than 75% of any assets of A available for distribution to its equity holders on a winding-up.

38 For the purposes of paragraph 37—

- (a) the ownership referred to in that paragraph is ownership either directly or through another company or companies, and
- (b) the amount of ordinary share capital of A owned by B through another company or companies is to be determined in accordance with sections 1155 to 1157 of the Corporation Tax Act 2010 (c.4).

“Ordinary share capital”, in relation to a company, means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

Chapter 6 of Part 5 of the Corporation Tax Act 2010 (c.4) (group relief: equity holders and profits or assets available for distribution) applies for the purposes of paragraph 37(b) and (c) as it applies for the purposes of section 151(4)(a) and (b) of that Act.

But sections 171(1)(b) and (3), 173, 174 and 176 to 178 of that Chapter are to be treated as omitted for the purposes of paragraph 37(b) and (c).

Other definitions

In this schedule—

“arrangements” include any scheme, agreement or understanding, whether or not legally enforceable,

“non-redeemable shares” means shares that are not redeemable shares.

SCHEDULE 12 *(introduced by section 27)*

RELIEF FOR INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

The relief

A land transaction by which a chargeable interest is transferred by a person (“the transferor”) to a limited liability partnership in connection with its incorporation is exempt from charge if the qualifying conditions are met.

The qualifying conditions

The qualifying conditions are—

- (a) that the effective date of the transaction is not more than 1 year after the date of incorporation of the limited liability partnership,
- (b) that at the relevant time the transferor—
 - (i) is a partner in a partnership, or
 - (ii) holds the interest transferred as nominee or bare trustee for one or more partners in a partnership,
- (c) that at the relevant time the partnership mentioned in paragraph (b) is comprised of all the persons who are or are to be members of the limited liability partnership (and no-one else), and
- (d) that either—

- (i) the proportions of the interest transferred to which the persons mentioned in paragraph (c) are entitled immediately after the transfer are the same as those to which they were entitled at the relevant time, or
- (ii) none of the differences in those proportions has arisen as part of a scheme or arrangement of which the main purpose, or one of the main purposes, is avoidance of liability to the tax.

Interpretation

3 In this schedule—

“limited liability partnership” means a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c.12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),

“the relevant time” means—

- (a) where the transferor acquired the interest after the incorporation of the limited liability partnership, immediately after the transferor acquired it, and
- (b) in any other case, immediately before the incorporation of the limited liability partnership.

SCHEDULE 13
(introduced by section 27)

CHARITIES RELIEF

The relief

1 A land transaction is exempt from charge if the buyer is a charity and the qualifying conditions are met.

Qualifying conditions

2 The qualifying conditions are—

- (a) that the buyer intends to hold—
 - (i) the subject-matter of the transaction, or
 - (ii) the greater part of that subject-matter,for qualifying charitable purposes, and
- (b) that the transaction has not been entered into for the purpose of avoiding the tax (whether by the buyer or any other person).

Qualifying charitable purposes

3 A buyer holds the subject-matter of a transaction for qualifying charitable purposes if the buyer holds it—

- (a) for use in the furtherance of the charitable purposes of the buyer or of another charity, or

- (b) as an investment from which the profits are applied to the charitable purposes of the buyer.

Withdrawal of relief

4 Relief under this schedule is withdrawn, or partially withdrawn, if—

5 (a) a disqualifying event occurs—

(i) before the end of the period of 3 years beginning with the effective date of the transaction which was exempt from charge under this schedule (“the relevant transaction”), or

10 (ii) in pursuance of, or in connection with, arrangements made before the end of that period, and

(b) at the time of the disqualifying event the buyer holds a chargeable interest—

(i) that was acquired by the buyer under the relevant transaction, or

(ii) that is derived from an interest so acquired.

5 A “disqualifying event” means—

15 (a) the buyer ceasing to be established for charitable purposes only, or

(b) the subject-matter of the relevant transaction, or any interest or right derived from it, being held or used by the buyer otherwise than for qualifying charitable purposes.

6 Where the relevant transaction is exempt from charge by virtue of qualifying condition (a)(ii), the following are also disqualifying events—

(a) any transfer by the buyer of a major interest in the whole or any part of the subject-matter of the relevant transaction, or

(b) any grant by the buyer at a premium of a low-rental lease of the whole or any part of that subject-matter,

25 that is not made for the charitable purposes of the buyer.

7 A lease—

(a) is granted “at a premium” if there is consideration other than rent, and

(b) is a “low-rental” lease if the annual rent (if any) is less than £1,000 a year.

8 Where relief is withdrawn, the amount of tax chargeable is the amount that would have been chargeable in respect of the relevant transaction but for the relief.

9 Where relief is partially withdrawn, the amount of tax chargeable is an appropriate proportion of the tax that would have been chargeable but for the relief.

10 An “appropriate proportion” means an appropriate proportion having regard to—

35 (a) what was acquired by the buyer under the relevant transaction and what is held by the buyer at the time of the disqualifying event, and

(b) the extent to which what is held by the buyer at that time becomes used or held for purposes other than qualifying charitable purposes.

11 In relation to a transfer or grant that is, by virtue of paragraph 6, a disqualifying event—

- (a) the date of the event for the purposes of paragraph 4 is the effective date of the transfer or grant,
- (b) paragraph 4(b) has effect as if, for “at the time” there were substituted “immediately before”,
- 5 (c) paragraph 10 has effect as if—
 - (i) in sub-paragraph (a), for “at the time of” there were substituted “immediately before and immediately after”,
 - (ii) sub-paragraph (b) were omitted.

Charitable trusts

- 10 12 This schedule applies in relation to a charitable trust as it applies to a charity.
- 13 “Charitable trust” means—
- (a) a trust of which all the beneficiaries are charities, or
 - (b) a unit trust scheme in which all the unit holders are charities.
- 14 In this schedule as it applies in relation to a charitable trust—
- 15 (a) references to the buyer in paragraph 3(a) and (b) are to the beneficiaries or unit holders, or any of them,
- (b) the reference to the buyer in paragraph 5(a) is to any of the beneficiaries or unit holders,
- 20 (c) the reference in paragraph 6 to the charitable purposes of the buyer is to those of the beneficiaries or unit holders, or any of them.

Interpretation

- 15 In this schedule “charity” and “charitable purposes” have the meaning given by section 106 of the Charities and Trustee Investments (Scotland) Act 2005 (asp 10).
- 16 In this schedule, “annual rent” means the average annual rent over the term of the lease or, if—
- 25 (a) different amounts of rent are payable for different parts of the term, and
- (b) those amounts (or any of them) are ascertainable at the time of the disqualifying event,
- 30 the average annual rent over the period for which the highest ascertainable rent is payable.

SCHEDULE 14 (introduced by section 27)

RELIEF FOR COMPULSORY PURCHASE FACILITATING DEVELOPMENT

The relief

- 35 1 An acquisition of a chargeable interest by a person mentioned in paragraph 2 is exempt from charge if the qualifying condition is met.
- 2 The person is—

- ### Qualifying conditions

Interpretation

5 In this schedule “development” has the same meaning as in the Town and Country Planning (Scotland) Act 1997 (c.8) (see section 26 of that Act).

RELIEF FOR COMPLIANCE WITH PLANNING OBLIGATIONS

1 A land transaction that is entered into in order to comply with—

- is exempt from charge if the qualifying conditions are met.

2 The qualifying conditions are—

- “Planning obligation” and “modification”*

4 “Modification” of a planning obligation means modification as mentioned in sections
75A and 75B of that Act.

5 The following are public bodies for the purposes of paragraph 2(b)—

a local authority,
the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),
a health board established under section 2(1)(a) of that Act,
5 Healthcare Improvement Scotland established under section 10A of that Act,
a special health board established under section 2(1)(b) of that Act,
any other body that is the planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997 (c.8),
10 a person prescribed for the purposes of this paragraph by the Scottish Ministers by order.

SCHEDULE 16
(introduced by section 27)

PUBLIC BODIES RELIEF

The relief

- 1 A land transaction entered into on, in consequence of or in connection with a reorganisation effected by or under an enactment is exempt from charge if the buyer and seller are both public bodies.
- 2 The Scottish Ministers may, by order, provide that a land transaction that is not entered into as mentioned in paragraph 1 is exempt from charge if—
20 (a) the transaction is effected by or under an enactment specified in the order, and
(b) either the buyer or the seller is a public body.

Meaning of “reorganisation”

- 3 A “reorganisation” means changes involving—
25 (a) the establishment, reform or abolition of one or more public bodies,
(b) the creation, alteration or abolition of functions to be discharged or discharged by one or more public bodies, or
(c) the transfer of functions from one public body to another.

Public bodies

- 4 The following are public bodies for the purposes of this schedule—
the Scottish Ministers,
a Minister of the Crown,
the Scottish Parliamentary Corporate Body,
a local authority,
35 the common services agency established under section 10(1) of the National Health Service (Scotland) Act 1978 (c.29),

a health board established under section 2(1)(a) of that Act,
 Healthcare Improvement Scotland established under section 10A of that Act,
 a special health board established under section 2(1)(b) of that Act,
 any other authority that is the planning authority for any of the purposes of the
 planning Acts within the meaning of the Town and Country Planning (Scotland)
 Act 1997 (c.8),
 a body (other than a company) that is established by or under an enactment for the
 purpose of carrying out functions conferred on it by or under an enactment,
 a person prescribed for the purposes of this paragraph by the Scottish Ministers by
 order.

In this schedule, references to a public body include—

- (a) a company in which all the shares are owned by such a body, and
- (b) a wholly-owned subsidiary of such a company.

In paragraphs 4 and 5, “company” means a company as defined by section 1 of the
 Companies Act 2006.

SCHEDULE 17 *(introduced by section 49)*

PARTNERSHIPS

PART 1

OVERVIEW

Overview

(1) This schedule makes provision about the application of this Act in relation to
 partnerships.

(2) It is arranged as follows—

Part 2 makes general provision about the treatment of partnerships,

Part 3 makes provision about ordinary transactions involving a partnership,

Part 4 makes provision about transactions involving transfers from a partner or
 certain other persons to a partnership,

Part 5 makes provision about transactions involving transfers from a partnership
 to a partner or certain other persons (including transfers between partnerships),

Part 6 makes provision about transfers of interest in, and transactions involving, a
 property investment partnership,

Part 7 makes provision about the application of provisions of this Act on
 exemptions, reliefs, and notification to transactions falling within Parts 4 to 6,

Part 8 defines expressions used in this schedule.

PART 2

GENERAL PROVISIONS

Meaning of “partnership”

2 In this Act, “partnership” means—

- 5 (a) a partnership within the Partnership Act 1890 (c.39),
(b) a limited partnership registered under the Limited Partnerships Act 1907 (c.24),
(c) a limited liability partnership formed under the Limited Liability Partnerships Act 2000 (c. 12) or the Limited Liability Partnerships Act (Northern Ireland) 2002 (c.12 (N.I.)),
10 (d) a firm or entity of a similar character to any of those mentioned in paragraphs (a) to (c) formed under the law of a country or territory outside the United Kingdom.

Chargeable interests treated as being held by partners etc.

3 (1) For the purposes of this Act—

- 15 (a) a chargeable interest held by or on behalf of a partnership is treated as held by or on behalf of the partners, and
(b) a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners,
and not by or on behalf of the partnership as such.

20 (2) Sub-paragraph (1) applies notwithstanding that the partnership is regarded as a legal person, or as a body corporate, under the law of the country or territory under which it is formed.

Acquisition of interest in partnership not chargeable except as specially provided

4 The acquisition of an interest in a partnership is not a chargeable transaction, notwithstanding that the partnership property includes land, except as provided by—

- 25 (a) Part 4 of this schedule (transfer of chargeable interest to a partnership),
(b) paragraph 17 (transfer of partnership interest pursuant to earlier arrangements), or
(c) paragraph 31 (transfer of interest in property-investment partnership).

Continuity of partnership

5 For the purposes of this Act, a partnership is treated as the same partnership
30 notwithstanding a change in membership if any person who was a member before the change remains a member after the change.

Partnership not to be regarded as unit trust scheme etc.

6 A partnership is not to be regarded for the purposes of this Act as a unit trust scheme or an open ended investment company.

PART 3

ORDINARY PARTNERSHIP TRANSACTIONS

Introduction

7 This Part of this schedule applies to land transactions entered into as buyer by or on
 5 behalf of the members of a partnership, other than transactions within Parts 4 to 6 of this
 schedule.

Responsibility of partners

8 (1) Anything required or authorised to be done under this Act by or in relation to the buyer
 10 in the transaction is required or authorised to be done by or in relation to all the
 responsible partners.

(2) The responsible partners in relation to a transaction are—

- (a) the persons who are partners at the effective date of the transaction, and
- (b) any person who becomes a member of the partnership after that date.

(3) This paragraph has effect subject to paragraph 9 (representative partners).

Representative partners

9 (1) Anything required or authorised to be done by or in relation to the responsible partners
 may instead be done by or in relation to any representative partner or partners.

(2) This includes making the declaration required by section 36 (declaration that return is
 complete and correct).

20 (3) A representative partner means a partner nominated by a majority of the partners to act
 as the representative of the partnership for the purposes of this Act.

(4) Any such nomination, or the revocation of such a nomination, has effect only after
 notice of the nomination, or revocation, has been given to the Tax Authority.

Joint and several liability of responsible partners

25 10 (1) Where the responsible partners are liable to make a payment of tax, the liability is a joint
 and several liability of those partners.

(2) No amount may be recovered by virtue of sub-paragraph (1) from a person who did not
 become a responsible partner until after the effective date of the transaction in respect of
 which the tax is payable.

PART 4

TRANSACTIONS INVOLVING TRANSFER TO A PARTNERSHIP

Overview of Part

11 This Part of this schedule is arranged as follows—

paragraphs 12 to 16 make provision about the treatment of certain land
 35 transactions involving the transfer of a chargeable interest to a partnership,

paragraphs 17 and 18 provide for certain events following such transactions to be treated as land transactions.

Circumstances in which this Part applies

12 (1) This Part of this schedule applies where—

- (a) a partner transfers a chargeable interest to the partnership,
- (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.

(2) This Part of this schedule applies whether the transfer is in connection with the formation of the partnership or is a transfer to an existing partnership.

(3) In this Part of this schedule—

“the land transfer” means the transaction mentioned in sub-paragraph (1), and
“the partnership” means the partnership to which the chargeable interest is transferred.

(4) This paragraph has effect subject to any election under paragraph 34.

Calculation of chargeable consideration etc.

13 (1) The chargeable consideration for the land transfer is taken to be equal to—

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

where—

MV is the market value of the interest transferred, and

SLP is the sum of the lower proportions determined in accordance with paragraph 14.

(2) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the land 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.

(3) This paragraph does not apply if the whole or part of the chargeable consideration for the land transfer is rent (see section 55 (application of this Act to leases)).

Sum of the lower proportions

14 The sum of the lower proportions in relation to the land transfer is determined as follows.

Step 1

Identify the relevant owner or owners.

Step 2

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

- 5 If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

Step 3

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

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

Step 4

Find the lower of the following proportions ("the lower proportion") for each corresponding partner—

- 15 (a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,
 (b) the partner's partnership share immediately after the land transfer.

Step 5

Add together the lower proportions for each corresponding partner.

- 20 The result is the sum of the lower proportions.

Relevant owner

- 15 (1) For the purposes of paragraph 14 (see Step 1), a person is a relevant owner if—
 (a) immediately before the land transfer, the person was entitled to a proportion of the chargeable interest, and
 25 (b) immediately after the land transfer, the person is a partner or connected with a partner.
 (2) For the purposes of this paragraph and paragraph 14, persons who are entitled to a chargeable interest as joint owners are to be taken to be entitled to the chargeable interest as common owners in equal shares.

30 *Corresponding partner*

- 16 (1) For the purposes of paragraph 14 (See Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately after the land transfer—
 (a) the person is a partner, and
 (b) the person is the relevant owner or is an individual connected with the relevant
 35 owner.
 (2) For the purposes of sub-paragraph (1)(b) a company is to be treated as an individual connected with the relevant owner in so far as it—

- (a) holds property as trustee, and
- (b) is connected with the relevant owner only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

Transfer of partnership interest pursuant to earlier arrangements

5 17 (1) This paragraph applies where—

- (a) subsequent to the land transfer, there a transfer of an interest in the partnership (“the partnership transfer”),
- (b) the partnership transfer is made—
 - 10 (i) if the land transfer falls within paragraph 12(1)(a) or (b), by the person who makes the land transfer,
 - (ii) if the land transfer falls within paragraph 12(1)(c), by the partner concerned,
- (c) the partnership transfer is made pursuant to arrangements that were in place at the time of the land transfer,
- 15 (d) the partnership transfer is not (apart from this paragraph) a chargeable transaction.

(2) The partnership transfer—

- (a) is to be treated as a land transaction, and
- (b) is a chargeable transaction.

(3) The partners are taken to be the buyers under the transaction.

20 (4) The chargeable consideration for the transaction is 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—

- 25 (a) if the person making the partnership transfer is not a partner immediately after the transfer, the person’s partnership share immediately before the transfer,
- (b) if that person is a partner immediately after the transfer, the difference between that person’s partnership share before and after the transfer.

(6) The partnership transfer and the land transfer are taken to be linked transactions.

30 (7) Paragraphs 8 to 10 (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.

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

35 18 (1) This paragraph applies where, during the period of 3 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 the person's capital account,
- (ii) reducing the person's 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 land transfer falls within paragraph 12(1)(a) or (b), the person who makes the land transfer,
- (b) where the land transfer falls within paragraph 12(1)(c), the partner concerned or a person connected with the partner.

(4) The qualifying event—

- (a) is treated as a land transaction, and
- (b) is a chargeable transaction.

(5) The partners are taken to be the buyers under the transaction.

(6) Paragraphs 8 to 10 (responsibility of partners) have effect in relation to the transaction.

(7) The chargeable consideration for the transaction is 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,
- (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.

(8) But (in any case) the chargeable consideration determined under sub-paragraph (7) is not to 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.

(9) The amount of tax payable by virtue of this paragraph in respect of the qualifying event (if any) is to be reduced (but not below nil) by any amount of tax payable by virtue of paragraph 31 (transfer for consideration of interest in property investment partnership) in respect of the event.

PART 5

TRANSACTIONS INVOLVING TRANSFER FROM A PARTNERSHIP

Overview of Part

19 This Part of this schedule is arranged as follows—

paragraphs 20 to 26 make provision about certain land transactions involving the transfer of a chargeable interest from a partnership,

paragraph 27 makes special provision where the transaction involves a transfer from a partnership to a partnership,

5 paragraph 28 makes special provision where the partnership consists entirely of bodies corporate.

Circumstances in which Part applies

20 (1) This Part of this schedule applies where a chargeable interest is transferred—

(a) from a partnership to a person who is or has been one of the partners, or

10 (b) from a partnership to a person connected with a person who is or has been one of the partners.

(2) For the purposes of this paragraph property that was partnership property before the partnership was dissolved or otherwise ceased to exist is to be treated as remaining partnership property until it is distributed.

15 (3) In this Part of this schedule—

“the land transfer” means the transaction mentioned in sub-paragraph (1), and

“the partnership” means the partnership from which the chargeable interest is transferred.

(4) This paragraph has effect subject to any election under paragraph 34.

20 *Calculation of chargeable consideration*

21 (1) The chargeable consideration for the land transfer is (subject to paragraph 28) taken to be equal to—

$MV \times (100 - SLP)\%$

where—

25 MV is the market value of the interest transferred, and

SLP is the sum of the lower proportions determined in accordance with paragraph 22.

(2) This paragraph does not apply if the whole or part of the chargeable consideration for the transaction is rent (see section 55 (application of this Act to leases)).

30 *Sum of the lower proportions*

22 The sum of the lower proportions in relation to the land transfer is determined as follows.

Step 1

Identify the relevant owner or owners.

35 *Step 2*

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

If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.

Step 3

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

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

Step 4

Find the lower of the following proportions ("the lower proportion") for each corresponding partner—

- (a) the sum of the proportions (if any) of the chargeable interest apportioned to the partner (at Step 3) in respect of each relevant owner,
- (b) the partnership share attributable to the partner.

Step 5

Add together the lower proportions of each corresponding partner.

The result is the sum of the lower proportions.

Relevant owner

23 (1) For the purposes of paragraph 22 (see Step 1), a person is a relevant owner if—

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

(2) For the purposes of this paragraph and paragraph 22, persons who are entitled to a chargeable interest as joint owners are taken to be entitled to the chargeable interest as common owners in equal shares.

Corresponding partner

24 (1) For the purposes of paragraph 22 (see Step 2), a person is a corresponding partner in relation to a relevant owner if, immediately before the land transfer—

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

(2) For the purposes of sub-paragraph (1)(b), a company is to be treated as an individual connected with the relevant owner in so far as it—

- (a) holds property as trustee, and
- (b) is connected with the relevant owner only because of section 1122(6) of the Corporation Tax Act 2010 (c.4).

Partnership share attributable to partner

25 (1) This paragraph provides for determining the partnership share attributable to a partner for the purposes of paragraph 22 (see Step 4).

5 (2) Where any tax payable in respect of the transfer of the relevant chargeable interest to the partnership has not been paid under this Act, the partnership share attributable to a partner is zero.

(3) Where the partner ceases 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.

10 (4) In any other case, paragraph 26 applies for determining the partnership share attributable to a partner.

(5) In this paragraph and paragraph 26, the relevant chargeable interest is—

(a) the chargeable interest which ceases to be partnership property as a result of the land transfer, or

15 (b) where the land transfer is the creation of a chargeable interest, the chargeable interest out of which that interest is created.

26 (1) Where this paragraph applies, the partnership share attributable to the partner is determined as follows.

Step 1

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

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,

25 (b) if the partner became a partner after that date, is the date on which the partner became a partner.

Step 2

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

(a) occur in the period starting on the day after the relevant date and ending immediately before the land transfer, and

30 (b) count for this purpose.

The result is the increased partnership share.

An increase counts for the purpose of paragraph (b) only if any tax payable in respect of the transfer which resulted in the increase has been duly paid under this Act.

Step 3

35 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 land transfer.

The result is the partnership share attributable to the partner.

- (2) If the effect of applying Step 3 would be to reduce the partnership share attributable to the partner below zero, the partnership share attributable to the partner is zero.

Transfer of chargeable interest from a partnership to a partnership

27 (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 Part 4 of this schedule applies, and
 (ii) a transaction to which this Part of this schedule applies.

(2) Paragraphs 13(1) and 21(1) do not apply.

(3) The chargeable consideration for the transaction is taken to be what it would have been if paragraph 13(1) had applied or, if greater, what it would have been if paragraph 21(1) had applied.

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

28 (1) This paragraph applies where—

- (a) immediately before the land transfer all the partners are bodies corporate, and
 (b) the sum of the lower proportions is 75 or more.

(2) Paragraphs 21 and 27 have effect with the modification set out in sub-paragraph (3).

(3) For paragraph 21 substitute—

“21 The chargeable consideration for the land transfer is taken to be equal to the market value of the interest transferred.”.

(4) Paragraph 22 provides for determining the sum of the lower proportions.

PART 6

PROPERTY INVESTMENT PARTNERSHIPS

Overview of Part

29 This Part of this schedule is arranged as follows—

paragraphs 31 to 33 make provision about certain transactions involving the transfer of an interest in a property investment partnership,
 paragraph 34 provides that a property investment partnership may elect to disapply paragraph 12 in relation to certain land transactions.

Meaning of “property investment partnership”

(1) In this schedule, “property-investment partnership” means a partnership whose sole or main activity is investing or dealing in chargeable interests (whether or not that activity involves the carrying out of construction operations on the land in question).

(2) In sub-paragraph (1) “construction operations” has the same meaning as in Chapter 3 of Part 3 of the Finance Act 2004 (see section 74 of that Act).

Transfer of interest in partnership treated as land transaction

31 (1) This paragraph applies where—

- (a) there is a transfer of an interest in a property-investment partnership, and
- (b) the relevant partnership property includes a chargeable interest.

5 (2) The transfer—

- (a) is treated as a land transaction, and
- (b) is a chargeable transaction.

(3) The buyer in 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.

10 (4) The chargeable consideration for the transaction is taken to be equal to a proportion of the market value of the relevant partnership property.

(5) That proportion is—

(a) if the person acquiring the interest in the partnership was not a partner before the transfer, the person's partnership share immediately after the transfer,

15 (b) if the person was a partner before the transfer, the different between the person's partnership share before and after the transfer.

(6) The relevant partnership property, in relation to a Type A transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—

20 (a) any chargeable interest that was transferred to the partnership in connection with the transfer,

(b) a lease to which paragraph 32 (exclusion of market rent leases) applies, and

(c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred.

25 (7) The relevant partnership property, in relation to a Type B transfer of an interest in a partnership, is every chargeable interest held as partnership property immediately after the transfer, other than—

(a) any chargeable interest that was transferred to the partnership in connection with the transfer,

30 (b) a lease to which paragraph 32 (exclusion of market rent leases) applies,

(c) any chargeable interest that is not attributable economically to the interest in the partnership that is transferred,

(d) any chargeable interest in respect of whose transfer to the partnership an election has been made under paragraph 34, and

35 (e) any other chargeable interest whose transfer to the partnership did not fall within paragraph 12(1)(a), (b) or (c).

(8) A Type A transfer is—

(a) a transfer that takes the form of arrangements entered into under which—

- (i) the whole or part of a partner's interest as partner is acquired by another person (who may be an existing partner), and
 - (ii) consideration in money or money's worth is given by or on behalf on the person acquiring the interest, or
- 5 (b) a transfer that takes the form of arrangements entered into under which—
- (i) a person becomes a partner,
 - (ii) the interest of an existing partner in the partnership is reduced or an existing partner ceases to be a partner, and
 - 10 (iii) there is a withdrawal of money or money's worth from the partnership by the existing partner mentioned in sub-paragraph (ii) (other than money or money's worth paid from the resources available to the partnership prior to the transfer).
- (9) Any other transfer to which this paragraph applies is a Type B transfer.
- 15 (10) An interest in respect of the transfer of which this paragraph applies is to be treated as a chargeable interest for the purposes of paragraph 15 of schedule 10 to the extent that the relevant partnership property consists of a chargeable interest.

Exclusion of market rent leases

- 32 (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 31(6) or
- 20 (7) 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
 - 25 (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
 - 30 (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.
- 35 (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.

- 33 (1) Where paragraph 5 of schedule 2 (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 is to 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 31(6) or (7) (as appropriate).
- 10 (3) The provisions of paragraph 6 of schedule 2 (partition etc.: disregard of existing interest) do not apply where this paragraph applies.

Election by property-investment partnership to disapply Part 4

- 34 (1) Part 4 of this schedule does not apply to a transfer of a chargeable interest to a property-investment partnership if the buyer in relation to the transaction elects for that paragraph not to apply.
- 15 (2) Where an election under this paragraph is made in respect of a transaction—
- (a) Part 5 of this schedule (if relevant) is also disappplied,
- (b) the chargeable consideration for the transaction is taken to be the market value of the chargeable interest transferred, and
- 20 (c) the transaction falls within Part 3 of this schedule.
- (3) An election under this paragraph must be included in the land transaction return made in respect of the transaction or in an amendment of that return.
- (4) Such an election is irrevocable and a land transaction return may not be amended so as to withdraw the election.
- 25 (5) Where an election under this paragraph in respect of a transaction (the “main transaction”) is made in an amendment of the land transaction return—
- (a) the election has effect as if it had been made on the date on which the land transaction return was made, and
- 30 (b) any land transaction return in respect of an affected transaction may be amended (within the period allowed for amendment of that return) to take account of that election.
- (6) In sub-paragraph (5) “affected transaction”, in relation to the main transaction, means a transaction—
- (a) to which paragraph 31 applied, and
- 35 (b) with an effective date on or after the effective date of the main transaction.

PART 7

APPLICATION OF PROVISIONS ON EXEMPTIONS, RELIEFS AND NOTIFICATION

Overview of Part

35 This Part of this schedule is arranged as follows—

- 5 paragraph 36 makes general provision about the application of exemptions and reliefs to transactions mentioned in Parts 4 to 6 of this schedule,
- paragraphs 37 and 38 makes provision about the application of group relief to certain transactions mentioned in Part 4 of this schedule,
- 10 paragraph 39 makes provision about the application of charities relief to certain transfers of interest in a partnership,
- paragraph 40 makes provision about the notification of certain transfers of interest in a partnership.

Application of exemptions and reliefs: general

- 15 36 (1) Paragraph 1 of schedule 1 (exemption of transactions for which there is no chargeable consideration) does not apply to—
- (a) a transaction to which Part 4 applies,
- (b) a transaction to which Part 5 applies, or
- (c) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17 or 31.
- 20 (2) But subject to paragraphs 37 and 39 this schedule has effect subject to any other provision affording exemption or relief from the tax.

Application of group relief

- 37 (1) Schedule 10 (group relief) applies with the following modifications to—
- (a) a transaction to which Part 4 applies, and
- 25 (b) a transfer of interest in a partnership which is treated as a land transaction by virtue of paragraph 17.
- (2) For paragraphs 14 and 15 substitute—
- “14 This paragraph applies where a partner who was a partner at the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant partner” and “the relevant transaction” respectively) ceases to be a
- 30 member of the same group as the seller—
- (a) before the end of the period of 3 years beginning with the effective date of the transaction, or
- (b) in pursuance of, or in connection with, arrangements made before the
- 35 end of that period.

15 This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

5 (a) was acquired by or on behalf of the partnership under the relevant transaction, or

 (b) 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.”.

10 (3) For paragraph 19(b), substitute—

 “(b) what is held at the relevant time by 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.”.

15 (4) In paragraphs 20 to 42, for “the buyer” (wherever appearing) substitute “the relevant partner”.

38 (1) This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 14)—

20 (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 16 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 is to 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.

25 (3) The provisions of schedule 10 apply to the relief under sub-paragraph (2) as to group relief under paragraph 2 of that schedule, but—

 (a) with the omission of paragraph 5(a),

 (b) with the substitution for paragraphs 14 and 15 of—

30 “14 This paragraph applies where a partner (“the relevant partner”) who was, at the effective date of the transaction which is exempt from charge by virtue of this schedule (“the relevant transaction”), a partner and a member of the same group as the transferor, ceases to be a member of the same group as the seller—

35 (a) before the end of the period of 3 years beginning with the effective date of the transaction, or

 (b) in pursuance of, or in connection with, arrangements made before the end of that period.

15 This paragraph applies where, at the time the relevant partner ceases to be a member of the same group as the seller (“the relevant time”), a chargeable interest is held by or on behalf of the members of the partnership and that chargeable interest—

40 (a) was acquired by or on behalf of the partnership under the relevant transaction, or

(b) 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.”,

(c) with the other modifications specified in paragraph 37(3) and (4).

5 *Application of charities relief*

39 (1) Schedule 13 (charities relief) applies to the transfer of interest in a partnership that is a chargeable transaction by virtue of paragraph 17 or 31 with these modifications.

10 (2) In paragraph 1, for “A land transaction is exempt from charge if the buyer is a charity” substitute “A transfer of an interest in a partnership that is a chargeable transaction by virtue of paragraph 17 or 31 of schedule 17 is exempt from charge if the transferee is a charity”.

(3) For paragraph 2(a), substitute—

“(a) that every chargeable interest held as partnership property immediately after the transfer must be held for qualifying charitable purposes,”.

15 (4) In paragraph 2(b), for “the buyer” substitute “the transferee”.

(5) In paragraph 3, for “the buyer” (wherever it occurs) substitute “the transferee”.

(6) For paragraph 4(b) substitute—

“(b) at the time of the disqualifying event the partnership property includes a chargeable interest—

20 (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.”.

(7) In paragraph 5(a), for “the buyer” substitute “the transferee”.

25 (8) For paragraph 5(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.”.

(9) For paragraph 10 substitute—

30 “10 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

35 (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.”.

(10) After paragraph 16 insert—

“17 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 17 (see paragraph 47 of that schedule).

5 18 Paragraph 42 of schedule 17 (meaning of references to partnership property) applies for the purposes of this schedule as it applies for the purposes of that schedule.”.

Notification of transfers of partnership interests

10 40 (1) A transaction which is a chargeable transaction by virtue of paragraph 17 or 31 (transfer of partnership interest) is a notifiable transaction if (but only if) the consideration for the transaction exceeds the nil rate band.

(2) The consideration for a transaction exceeds the nil rate band if—

(a) the chargeable consideration, or

(b) where the transaction is one of a number of linked transactions, the total of the chargeable consideration for all the linked transactions,

15 exceeds the nil rate band applicable to the transaction.

PART 8

INTERPRETATION

Introduction

41 This Part of this schedule defines expressions used in this schedule.

20 *Partnership property*

42 Any reference 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.

Partnership share

25 43 Any reference to a person’s partnership share at any time is to the proportion in which the person is entitled at that time to share in the income profits of the partnership.

Transfer of chargeable interest

44 References to the transfer of a chargeable interest include—

(a) the creation of a chargeable interest,

30 (b) the renunciation or release of a chargeable interest, and

(c) the variation of a chargeable interest.

Transfer of chargeable interest to a partnership

45 For the purposes of this schedule, there is a transfer of a chargeable interest to a partnership in any case where a chargeable interest becomes partnership property.

Transfer of chargeable interest from a partnership

46 For the purposes 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 created out of partnership property and the interest is not partnership property.

Transfer of interest in a partnership

47 For the purposes of this schedule, where a person acquires or increases a partnership share there is a transfer of an interest in the partnership (to that partner and from the other partners).

Connected persons

48 In the application of section 1122 of the Corporation Tax Act 2010 (connected persons) for the purposes of this schedule—

- (a) that section has effect with the omission of subsection (7) (partners connected with each other), and
- (b) for the purposes of paragraph 12 or 22, that section has effect with the omission of subsection (6)(c) to (e) (trustee connected with settlement).

Arrangements

49 “Arrangements” includes any scheme, agreement or understanding, whether or not legally enforceable.

SCHEDULE 18
(introduced by section 50)

TRUSTS

PART 1

OVERVIEW

Overview

1 (1) This schedule makes provision about the application of this Act in relation to trusts.

(2) It is arranged as follows—

Part 2 makes provision for the application of this Act to trusts generally,

Part 3 makes provision for the treatment of certain transactions involving bare trusts,

Part 4 makes provision for the treatment of certain transactions involving settlements,

Part 5 makes provision for the liability of trustees of a settlement to pay the tax and make returns and declarations,

Part 6 defines expressions used in this schedule.

PART 2

5 TREATMENT OF TRUSTS AND BENEFICIARIES GENERALLY

Interests of beneficiaries under certain trusts

2 Paragraphs 3 and 4 apply where property is held in trust—

(a) under the law of Scotland, or

(b) under the law of a country or territory outwith the United Kingdom,

10 on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property.

3 The beneficiary is to be treated for the purpose of this Act as having a beneficial interest in the trust property despite the fact that no such interest is recognised by the law of Scotland or of the country or territory outwith the United Kingdom.

15 4 An acquisition of the interest of a beneficiary under the trust is to be treated as involving the acquisition of an interest in the trust property.

PART 3

TRANSACTIONS INVOLVING BARE TRUSTS

Acquisition of chargeable interest by bare trustee

20 5 Where a person (T) acquires a chargeable interest or an interest in a partnership as bare trustee, this Act applies as if the interest were vested in, and the acts of T in relation to it were the acts of the person or persons for whom T is trustee.

6 Paragraph 5 does not apply in relation to the grant of a lease.

Grant of lease to bare trustee

25 7 Where a lease is granted to a person as bare trustee, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as buyer of the whole of the interest acquired.

Grant of lease by bare trustee

30 8 Where a person, as bare trustee, grants a lease, the person is to be treated for the purposes of this Act, as it applies in relation to the grant of a lease, as seller of the whole of the interest disposed of.

PART 4

TRANSACTIONS INVOLVING SETTLEMENTS

Acquisition by trustees of settlements

9 Where persons, as trustees of a settlement, acquire a chargeable interest or an interest in
5 a partnership, they are to be treated for the purposes of this Act, as it applies to that
 acquisition, as buyers of the whole of the interest acquired (including the beneficial
 interest).

Consideration for exercise of power of appointment or discretion

10 Paragraph 11 applies where a chargeable interest is acquired by virtue of—

- 10 (a) the exercise of a power of appointment, or
 (b) the exercise of a discretion vested in trustees of a settlement.

11 Any consideration given for the person in whose favour the appointment was made or
 the discretion was exercised becoming an object of the power or discretion is to be
 treated for the purpose of this Act as the consideration for the acquisition of the interest.

Reallocation of trust property as between beneficiaries

12 Paragraph 13 applies where—

- (a) the trustees of a settlement reallocate trust property in such a way that a
 beneficiary acquires an interest in certain trust property and ceases to have an
 interest in other trust property, and
20 (b) the beneficiary consents to ceasing to have an interest in that other property.

13 The fact that the beneficiary gives consent does not mean that there is chargeable
 consideration for the acquisition.

PART 5

SETTLEMENTS: PAYMENT OF TAX AND RETURNS

Liability to pay the tax

14 Where the trustees of a settlement are liable to pay the tax, the payment may be
 recovered (but only once) from any one or more of the responsible trustees.

Liability to make returns

15 A return in relation to a land transaction may be made by any one or more of the
30 responsible trustees in relation to the transaction (the “relevant trustees”).

Duty to make declaration

16 The declaration required by section 36(1) or (2)(a) must be made by all the relevant
 trustees.

Responsible trustees

- 17 The responsible trustees, in relation to a land transaction, are—
- (a) the persons who are trustees at the effective date of the transaction, and
 - (b) any person who subsequently becomes a trustee.

5

PART 6

INTERPRETATION

Meaning of “bare trust”

- 18 In this schedule, a “bare trust”—
- (a) is a trust under which the property is held by a person as trustee—
 - 10 (i) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being under a legal disability by reason of non-age or under another disability, or
 - (ii) for two or more persons who are or would be jointly so entitled, and
 - (b) includes a case in which a person holds property as a nominee for another.

15

Meaning of “absolutely entitled”

- 19 The references in paragraph 18 to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee—
- (a) to resort to the property for payment of duty, taxes, costs or other outgoings, or
 - 20 (b) to direct how the property is to be dealt with.

Meaning of “settlement”

- 20 In this schedule, “settlement” means a trust that is not a bare trust.

SCHEDULE 19
(introduced by section 65)

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Land and Buildings Transaction Tax (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision about the taxation of land transactions.

Introduced by: John Swinney
On: 29 November 2012
Bill type: Government Bill

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