

73. Stamp duty land tax (miscellaneous amendments)

That—

- (1) Part 4 of the Finance Act 2003 shall be amended in accordance with the following provisions of this Resolution.
- (2) In section 43—
  - (a) in paragraph (c) of subsection (3), after “interest” there shall be inserted “(other than a lease)”;
  - (b) after that paragraph there shall be inserted—
    - “(d) the variation of a lease is an acquisition and disposal of a chargeable interest only where it takes effect, or is treated for the purposes of this Part, as the grant of a new lease.”.
- (3) After subsection (9) of section 44 there shall be inserted—

“(9A) Where—

  - (a) paragraph 12A of Schedule 17A applies (agreement for lease), or
  - (b) paragraph 19(3) to (6) of Schedule 17A applies (missives of let in Scotland),

it applies in place of subsections (4), (8) and (9).”.
- (4) After that section there shall be inserted—

**“44A 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 such a person 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 Part as acquiring a chargeable interest, and accordingly as entering into a land transaction.  
The effective date of the transaction is when the contract is substantially performed.
- (4) Where the contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue of subsection (3) shall (to that extent) be repaid by the Inland Revenue.  
Repayment must be claimed by amendment of the land transaction return made in respect of the contract.
- (5) Subject to subsection (6), section 44 (contract and conveyance) does not apply (except so far as it defines “substantial performance”) in relation to the contract.
- (6) Where—
  - (a) this section 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,  
section 44 applies to that obligation as it applies to a contract for a land transaction that is to be completed by a conveyance.

(7) Section 44 applies in relation to any contract between B and C, in respect of the chargeable interest referred to in subsection (1) above, that is to be completed by a conveyance.  
References to completion in that section, as it so applies, include references to conveyance by A to C of the subject matter of the contract between B and C.

(8) In this section "contract" includes any agreement and "conveyance" includes any instrument."

(5) In section 45 –

- (a) after paragraph (b) of subsection (1) there shall be inserted “, and
  - (c) paragraph 12B of Schedule 17A (assignment of agreement for lease) does not apply.”;
- (b) at the end of that subsection there shall be inserted “, and references to the transferor and the transferee shall be read accordingly.”;
- (c) for subsection (5) there shall be substituted –

“(5) Where a transfer of rights relates to part only of the subject-matter of the original contract (“the relevant part”) –

- (a) subsection (8)(b) of section 44 (restriction of charge to tax on subsequent conveyance) has effect as if the reference to the amount of tax chargeable on that contract were a reference to an appropriate proportion of that amount, and
- (b) a reference in the second sentence of subsection (3) above to the original contract, or a reference in subsection (4) above to the secondary contract arising from an earlier transfer of rights, is to that contract so far as relating to the relevant part (and that contract so far as not relating to the relevant part shall be treated as a separate contract).”;

(d) after that subsection there shall be inserted –

“(5A) In relation to a land transaction treated as taking place by virtue of subsection (3) –

- (a) references in Schedule 7 (group relief) to the vendor shall be read as references to the vendor under the original contract;
- (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either the vendor under the original contract or the transferor.”.

(6) After section 45 there shall be inserted –

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

(1) This section applies where –

- (a) a contract (“the original contract”) is entered into under which a chargeable interest is to be conveyed by one party to the contract (A) at the direction or request of the other (B) –
  - (i) to a person (C) who is not a party to the contract, or

- (ii) either to such a person or to B,  
and
- (b) there is an assignment or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person (D) becomes entitled to exercise any of B's rights under the original contract in place of B.

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

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

- (9) In relation to a such a transaction –
  - (a) references in Schedule 7 (group relief) to the vendor shall be read as references to A;
  - (b) other references in this Part to the vendor shall be read, where the context permits, as referring to either A or B.
- (10) Section 839 of the Taxes Act 1988 (connected persons) applies for the purposes of subsection (3)(b).
- (11) In this section “contract” includes any agreement.”.
- (7) After subsection (6) of section 48 there shall be inserted –
  - “(7) This section has effect subject to subsection (3) of section 44A (contract and conveyance to third party).”.
- (8) After subsection (4) of section 77 there shall be inserted –
  - “(5) A land transaction that a person is treated as entering into by virtue of subsection (3) of section 44A (contract and conveyance to third party) is notifiable.”.
- (9) In section 57A –
  - (a) for paragraph (b) of subsection (3) there shall be substituted –
    - “(aa) that the sale transaction is entered into wholly or partly in consideration of the leaseback transaction being entered into,
    - (b) that the only other consideration (if any) for the sale is the payment of money or the assumption, satisfaction or release of a debt (or both),”;
  - (b) after paragraph (c) of that subsection there shall be inserted –
    - “(d) that the sale is not a transfer of rights within the meaning of section 45 (contract and conveyance: effect of transfer of rights) or 45A (contract providing for conveyance to third party: effect of transfer of rights), and
    - (e) 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 paragraph 1 of Schedule 7) at that date.”;
  - (c) subsection (4) shall be omitted.
- (10) In section 79(2), for the words from “other than” to the end of paragraph (b) there shall be substituted “other than a transaction treated as taking place –
  - (a) under subsection (4) of section 44 (contract and conveyance) or under that section as it applies by virtue of section 45 (contract and conveyance: effect of transfer of rights), or
  - (b) under subsection (3) of section 44A (contract providing for conveyance to third party) or under that section as it applies by virtue of section 45A (contract providing for conveyance to third party: effect of transfer of rights).”.
- (11) In section 119(2) –
  - (a) after the entry for section 44(4) there shall be inserted –
    - “section 44A(3) (contract providing for conveyance to third party),
    - section 45A(8) (contract providing for conveyance to third party: effect of transfer of rights),”;

- (b) at the end there shall be inserted –  
“paragraph 12A(2) of Schedule 17A (agreement for lease followed by substantial performance),  
paragraph 12B(3) of that Schedule (assignment of agreement for lease occurring after agreement substantially performed), and  
paragraph 19(3) of that Schedule (missives of let in Scotland followed by substantial performance).”.
- (12) In section 122, in the entry for “vendor” there shall be inserted at the end “(see too sections 45(5A) and 45A(9))”.
- (13) In Schedule 4 –  
(a) after sub-paragraph (2) of paragraph 10 there shall be inserted –  
“(2A) Where subsection (8) of section 44 (contract and conveyance) applies, so that there are two notifiable transactions (the first being the contract and the second being the transaction effected on completion), 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.”;  
(b) after sub-paragraph (4) of paragraph 17 there shall be inserted –  
“(4A) Sub-paragraphs (3) and (4) shall be disregarded for the purposes of determining whether the land transaction in question is notifiable.”.
- (14) After paragraph 1 of Schedule 5 there shall be inserted –  
*“Amounts payable in respect of periods before grant of lease*  
1A For the purposes of this Part “rent” does not include any chargeable consideration for the grant of a lease that is payable in respect of a period before the grant of the lease.”
- (15) After paragraph 7 of Schedule 17A there shall be inserted –  
*“First rent review in final quarter of fifth year*  
7A Where –  
(a) a lease contains provision under which the rent may be adjusted,  
(b) under that provision the first (or only) such adjustment –  
(i) is to an amount that (before the adjustment) is uncertain, and  
(ii) has effect from a date (the “review date”) that is expressed as falling five years after a specified date,  
and  
(c) the specified date falls within the three months before the beginning of the term of the lease,  
this Schedule has effect as if references to the first five years of the term of the lease were to the period beginning with the start of the term of the lease and ending with the review date.  
References to the fifth year of the term of the lease shall be read accordingly.”.

(16) In paragraph 9(1) of that Schedule, at the end of paragraph (b) there shall be inserted “, or

- (c) a person claiming relief against re-entry or forfeiture as under-lessee in relation to the original sub-lease (“the old lease”) is granted a lease (“the new lease”) in pursuance of an order of a court.”.

(17) After paragraph 12 of that Schedule there shall be inserted –

*“Agreement for lease*

12A (1) This paragraph applies where in England and Wales or Northern Ireland –

- (a) an agreement for a lease is entered into, and
- (b) the agreement is substantially performed without having been completed.

(2) The agreement is treated as if it were the grant of a lease in accordance with the agreement (“the notional lease”), beginning with the date of substantial performance.

The effective date of the transaction is that date.

(3) Where a lease is subsequently granted in pursuance of the agreement –

- (a) the notional lease is treated as if it were surrendered at that time, and
- (b) the lease itself is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.

(4) Where sub-paragraph (1) applies and the agreement 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 sub-paragraph shall (to that extent) be repaid by the Inland Revenue. Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.

(5) In this paragraph “substantially performed” and “completed” have the same meanings as in section 44 (contract and conveyance).

*Assignment of agreement for lease*

12B (1) This paragraph applies, in place of section 45 (contract and conveyance: effect of transfer of rights) where in England and Wales or Northern Ireland a person assigns his interest as lessee under an agreement for a lease.

(2) If the assignment occurs without the agreement having been substantially performed, section 44 (contract and conveyance) has effect as if –

- (a) the contract were with the assignee and not the assignor, and
- (b) the consideration given by the assignee for entering into the contract included any consideration given by him for the assignment.

- (3) If the assignment occurs after the agreement has been substantially performed –
  - (a) the assignment is a separate land transaction, and
  - (b) the effective date of that transaction is the date of the assignment.
- (4) Where there are successive assignments, this paragraph has effect in relation to each of them.”.
- (18) At the end of paragraph 16 of that Schedule there shall be inserted –

“Paragraph 5 (exchanges) of Schedule 4 (chargeable consideration) does not apply in such a case.”.
- (19) For paragraph 19(2) of that Schedule there shall be substituted –
  - “(2) Where in Scotland there is a lease constituted by concluded missives of let (“the first lease”) and at some later time a lease is executed (“the second lease”) –
    - (a) the first lease is treated as if it were surrendered at that time, and
    - (b) the second lease is treated for the purposes of paragraph 9 (rent for overlap period in case of grant of further lease) as if it were granted in consideration of that surrender.
  - (3) Where in Scotland –
    - (a) there are concluded missives of let that do not constitute a lease, and
    - (b) the agreement represented by the missives of let is substantially performed without a lease having been executed,

the missives of let are treated as if they did constitute a lease (“the notional lease”).

The effective date of the transaction is when the agreement is substantially performed.
  - (4) Where sub-paragraph (3) applies and at some later time a lease is executed –
    - (a) the notional lease is treated as if it were surrendered at that time, and
    - (b) the lease itself is treated for the purposes of paragraph 9 as if it were granted in consideration of that surrender.
  - (5) References in sub-paragraphs (2) to (4) to the execution of a lease are to the execution of a lease that either –
    - (a) is in conformity with the missives of let, or
    - (b) relates to substantially the same property and period as the missives of let.
  - (6) Where subsection (3) applies and the agreement 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 sub-paragraph shall (to that extent) be repaid by the Inland Revenue.
  - Repayment must be claimed by amendment of the land transaction return made in respect of the agreement.”.
- (20) For paragraph 3(3)(c) of Schedule 19 there shall be substituted –

“(c) if on or after that date there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the contract) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.”.

- (21) Paragraphs (4), (7) and (8) of this Resolution, and paragraphs (10) and (11) so far as relating to the section 44A inserted by paragraph (4), shall apply in relation to any contract entered into after 17th March 2004.
- (22) Paragraphs (5), (6) and (12) of this Resolution, and paragraphs (10) and (11) so far as relating to the section 45A inserted by paragraph (6), shall apply in relation to any transfer of rights occurring after that date.
- (23) Subject to paragraph (24) of this Resolution, the amendments made by the other provisions of this Resolution shall apply in relation to any transaction of which the effective date is after 17th March 2004.
- (24) Paragraph (20) of this Resolution shall not apply in relation to a contract that was substantially performed before 17th March 2004.
- (25) In this Resolution –
  - “effective date” and “substantially performed” have the same meaning as in Part 4 of the Finance Act 2003 (as amended by this Resolution);
  - “transfer of rights” has the same meaning as in section 45 of that Act or, as the case may require, section 45A of that Act (inserted by paragraph (6) of this Resolution).

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act 1968.

74. Stamp duty land tax (shared ownership leases)

That—

- (1) After paragraph 4 of Schedule 9 to the Finance Act 2003 there shall be inserted—

*“Shared ownership lease: treatment of staircasing transaction*

4A (1) This paragraph applies where under a shared ownership lease—

- (a) the lessee or lessees have the right, on the payment of a sum, to require the terms of the lease to be altered so that the rent payable under it is reduced, and
- (b) by exercising that right the lessee or lessees acquire an interest, additional to one already held, calculated by reference to the market value of the dwelling and expressed as a percentage of the dwelling or its value (a “share of the dwelling”).

(2) Such an acquisition is exempt from charge if—

- (a) an election was made for tax to be charged in accordance with paragraph 2 or, as the case may be, paragraph 4 and any tax chargeable in respect of the grant of the lease has been paid, or
- (b) immediately after the acquisition the total share of the dwelling held by the lessee or lessees does not exceed 80%.

(3) In this paragraph “shared ownership lease” means a lease granted—

- (a) by a qualifying body, or
- (b) in pursuance of the preserved right to buy, in relation to which the conditions in paragraph 2(2) or 4(2) are met.

(4) Section 118 (meaning of “market value”) does not apply in relation to the references in this paragraph to the market value of the dwelling.”.

- (2) In sub-paragraph (1) of paragraph 5 of that Schedule, for “2 and 4” there shall be substituted “2, 4 and 4A”.

- (3) In Schedule 19 to that Act, for sub-paragraph (2) of paragraph 7 there shall be substituted—

“(2) In paragraph 3 of Schedule 9 (relief for transfer of reversion under shared ownership lease where election made for market value treatment) and paragraph 4A of that Schedule (shared ownership lease: treatment of staircasing transaction) as they apply in a case where the original lease was granted before the implementation date—

- (a) a reference to a lease to which paragraph 2 of that Schedule applies shall be read as a reference to a lease to which section 97 of the Finance Act 1980 applied (which made provision for stamp duty corresponding to that paragraph), and
- (b) a reference to an election having been made for tax to be charged in accordance with paragraph 2 or 4 of that Schedule shall be read as a reference to the lease having contained a statement of the parties’ intention such as is mentioned in section 97(2)(d) of the Finance Act 1980 or, as the case may be,

paragraph (d) of section 108(5) of the Finance Act 1981 (which made provision for stamp duty corresponding to paragraph 4).”.

- (4) The amendments made by paragraphs (1) and (2) of this Resolution shall apply in relation to an acquisition after 17th March 2004.
- (5) Paragraph (3) of this Resolution shall be deemed to have come into force on 1st December 2003.

And it is hereby declared that it is expedient in the public interest that this Resolution should have statutory effect under the provisions of the Provisional Collection of Taxes Act 1968.