

**BOARD OF INLAND REVENUE      FINANCE (No. 2) BILL 2005**  
**CLAUSE 94**  
**SCHEDULE 8**

**EXPLANATORY NOTE**

**CLAUSE 94 AND SCHEDULE 8: ALTERNATIVE  
PROPERTY FINANCE**

**SUMMARY**

1. Clause 94 and Schedule 8 extends the relief from Stamp Duty Land Tax available for alternative property finance mechanisms.

**DETAILS OF THE CLAUSE**

2. The Clause introduces the Schedule.

**DETAILS OF THE SCHEDULE**

3. This schedule is in three parts. The first part, section 71A, maintains the existing relief from multiple charges to Stamp Duty Land Tax (SDLT) for alternative property finance, plus extends the relief to another product in England and Wales and Northern Ireland. The second part of this schedule, section 72, maintains the relief offered prior to this change by section 72 in Scotland. The third part of this schedule, section 72A, extends a new relief to Scotland.
4. Paragraph (1) allows for the amendment of the SDLT legislation in Finance Act 2003.
5. Paragraph (2) inserts section 71A to provide for the relief for alternative property finance in England and Wales and Northern Ireland.
  - a. Subsection (1) describes the structure of alternative property finance arrangements that can be undertaken between a financial institution and an individual for the purposes of this clause.

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- b. Subsection (1)(a) defines the ‘first transaction’ that occurs as part of the arrangement for the benefit of this clause.
- c. Subsection (1)(b) provides for the financial institution and the individual to be beneficial tenants in common, and outlines the structure in which the major interest is held.
- d. Subsection (1)(c) defines the ‘second transaction’ that occurs as part of the arrangement for the benefit of this clause.
- e. Subsection (1)(d) describes the final part of the arrangement being entered into. The individual can, subject to an agreement, acquire the financial institution’s interest in a series of transactions or by one further transaction.
- f. Subsection (2) provides for the conditions under which the first transaction is exempt from SDLT. This subsection allows the individual to switch financial institution without incurring additional SDLT.
- g. Subsection (3) provides for the conditions under which the second transaction is exempt from SDLT.
- h. Subsection (4) provides for the conditions under which the final transaction or series of transactions is exempt from SDLT. This is dependent on conditions being fulfilled at all times between the second transaction and the final further transaction.
- i. Subsection (5) provides for Section 44(5) and 46 to not apply to the agreement out lined in subsection (1)(d).
- j. Subsection (6) states the type of individuals who are not eligible to use the relief provided by this clause.
- k. Subsection (7) explains the notification requirements of this clause.
- l. Subsection (8) defined ‘financial institution’.
- m. Subsection (9) provides for the estate of a deceased individual.
- n. Subsection (10) states that this provision does not apply to land in Scotland.

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6. Paragraph (3) amends section 72. Section 72 becomes available only for land transactions in Scotland.
  - a. Subsection (1) provides for the amendment of section 72.
  - b. Subsection (2) inserts explicitly Scottish terms into subsection (1)(b) of section 72 and omits the terms “or its successor in title” from subsection (1)(b) of section 72.
  - c. Subsection (3) defines financial institution.
  - d. Subsection (4) omits subsection (8), which contained terms to be used when the un-amended S72 was applied to Scotland. These terms are incorporated in the amended 72 under Subsection (2) above.
  - e. Subsection (5) provides for subsection (10) to be inserted. This restricts this relief to land Scotland.
  - f. Subsection (6) alters the heading of section 72, by inserting the word ‘Scotland’. The heading now reads, “alternative property finance Scotland: land sold to financial institutions and leased to individuals”.
  
7. Paragraph (4) inserts section 72A after section 72 to allow for the relief of alternative property finance in Scotland.
  - a. Subsection (1) describes the structure of the arrangement between individuals and financial institutions that is eligible for relief under this clause.
  - b. Subsection (1)(a) defines the ‘first transaction’ that occurs as part of the arrangement for the benefit of this clause.
  - c. Subsection (1)(b) defines the ‘second transaction’ that occurs as part of the arrangement for the benefit of this clause.
  - d. Subsection (1)(c) describes the final part of the arrangement being entered into. This allows the transfer of the financial institution’s interest to the individual in either one or a series of transactions.
  - e. Subsection (2) specifies the conditions under which the ‘first transaction’ is exempt from SDLT.
  - f. Subsection (3) exempts the second transaction from SDLT provided the specified are met.

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- g. Subsection (4) allows for the exemption from SDLT of the series of transactions or the single final transaction that constitute the final part of the arrangement defined in subsection (1)(c).
  - h. Subsection (5) provides for sections 44(5) and 46 to not apply until the entire interest has been transferred to the individual.
  - i. Subsection (6) restricts the relief to certain types of individuals.
  - j. Subsection (7) states the notification requirements of this relief.
  - k. Subsection (8) defines the term ‘financial institution’.
  - l. Subsection (9) provides for the estate of a deceased individual.
  - m. Subsection (10) restricts this relief to land in Scotland.
8. Paragraphs (5) and (6) introduce consequential amendments.
9. Paragraph (7) details commencement. This clause will have effect in cases where the ‘first transaction’ as defined in each 71A, 72, and 72A occurs on or after the day on which this Act is passed.

**BACKGROUND NOTES**

10. This clause and schedule amend and extend section 72 Finance Act 2003 to increase the number of products eligible for alternative property finance relief. They also provide relief for certain products that allow the financial institution and the individual to be beneficial tenants in common, and for beneficial interest to transfer during the period of the arrangement in England and Wales and Northern Ireland. In addition, they provide relief in Scotland for arrangements where the financial institution and the individual are owners in common, and a co-ownership agreement is entered into rather than a lease.

## **EXPLANATORY NOTES**

### **CLAUSE 95: RAISING OF THRESHOLDS**

#### **SUMMARY**

1. Clause 95 raises the threshold for Stamp Duty Land Tax on residential transactions from £60,000 to £120,000, and raises the threshold for stamp duty on documents effecting land transactions from £60,000 to £120,000

#### **DETAILS OF THE CLAUSE**

2. Subsection (1) raises the threshold for Stamp Duty Land Tax as it applies to consideration other than rent on residential transactions from £60,000 to £120,000.
3. Subsection (2) raises the threshold for Stamp Duty Land Tax as it applies to rent on residential transactions from £60,000 to £120,000.
4. Subsection (3) applies to stamp duty on land transactions. Although most land transactions are now subject to Stamp Duty Land Tax some transactions remain outside the scope of Stamp Duty Land Tax by virtue of the transitional provisions in Schedule 19 Finance Act 2003. Documents effecting such transactions remain subject to stamp duty. This subsection raises the threshold on such documents from £60,000 to £120,000.
5. Subsection (4) provides that the Stamp Duty Land Tax amendments apply to any land transaction the effective date of which, as defined in section 119 Finance 2003 is on or after 17 March 2005.
6. Subsection (5) provides that the stamp duty amendments apply to any document executed on or after 17 March 2005.

**BACKGROUND NOTE**

7. The threshold for Stamp Duty Land Tax on non-residential or mixed transactions is unchanged at £150,000. The increased threshold of £150,000 for residential transactions in designated disadvantaged areas is also unchanged.

**EXPLANATORY NOTE**

**CLAUSE 96 AND SCHEDULE 9: REMOVAL OF  
DISADVANTAGED AREAS RELIEF FOR NON-  
RESIDENTIAL PROPERTY**

**SUMMARY**

1. Clause 96 and Schedule 9 provide for the removal, in relation to non-residential property, of relief from stamp duty land tax and stamp duty in disadvantaged areas.

**DETAILS OF THE CLAUSE**

2. The Clause provides for the Schedule to have effect.

**DETAILS OF THE SCHEDULE**

3. Paragraph 1 deals with stamp duty land tax and provides for amendments to Schedule 6 Finance Act 2003(stamp duty land tax: disadvantaged areas relief). It ends disadvantaged areas relief where the land is non-residential.
4. Paragraph 2 applies to stamp duty and amends The Stamp Duty (Disadvantaged Areas) (Application of Exemptions) Regulations 2003 (S.I. 2003/1056). It ends the stamp duty exemption for conveyance or transfer on sale or the lease of land for non-residential property.
5. Paragraph 3 ensures that the regulations dealt with in paragraph 2 can be amended or revoked by regulations made under section 92A of FA 2001, notwithstanding that in this instance they have been amended by primary legislation.

6. Paragraph 4 deals with commencement and transitional provisions for stamp duty land tax. It applies paragraph 1 to any transaction with an effective date after 16 March 2005 unless the transaction is effected in pursuance of a contract entered into and substantially performed on or before 16 March 2005, or (subject to paragraph 4(3)) to any other transaction effected in pursuance of a contract entered into on or before that date, but this is subject to three exclusions, where:
  - the contract is varied or rights are assigned after that date;
  - the transaction is effected in consequence of the exercise after that date of any option or right of pre-emption, or
  - there is an assignment, sub-sale or other transaction after that date which means that a person other than the purchaser under the contract is entitled to call for a conveyance to him.
  
7. Paragraph 5 deals with commencement and transitional provisions for stamp duty. It provides that paragraph 2 applies to instruments executed after 16 March 2005, but not to instruments giving effect to contracts entered into on or before 16 March 2005 unless:
  - the instrument is made in consequence of the exercise after that date of any option or right of pre-emption, or
  - the instrument transfers the property to a person other than the purchaser under the contract in consequence of an assignment or sub-sale.

### **BACKGROUND NOTES**

8. Although most land transactions are now subject to stamp duty land tax, some transactions remain outside the scope of stamp duty land tax by virtue of the transitional provisions in Schedule 19 Finance Act 2003. Documents effecting such transactions remain subject to stamp duty. The Schedule therefore provides for amendments to both stamp duty land tax and stamp duty.

**EXPLANATORY NOTES**

**CLAUSE 97: DEMUTUALISATION OF INSURANCE  
COMPANIES**

**SUMMARY**

1. Clause 97 restores relief from stamp duty and stamp duty reserve tax to units in unit trusts and shares in open-ended investment companies that are transferred or surrendered on the demutualisation of insurance companies.
2. A relief was introduced in 1997 so that, subject to certain conditions, stamp duty and stamp duty reserve tax will not apply on the demutualisation of an insurance company. It has come to light that changes to the stamp duty and stamp duty reserve tax legislation in 1999 unintentionally removed the relief from units in unit trusts and shares in open-ended investment companies that are transferred as part of a demutualisation.
3. The new clause will ensure that, as originally intended, no stamp duty or stamp duty reserve tax charges will arise when units are transferred or surrendered on a qualifying demutualisation of an insurance company.

**DETAILS OF THE CLAUSE**

4. Subsection (1) provides for amendments to be made to section 90 FA 1986 (exceptions to stamp duty reserve tax).
5. Subsection (2) amends section 90(1A) FA 1986 by inserting a reference to section 96 of the Finance Act 1997 (the relief for demutualisation of insurance companies).
6. Subsection (3) provides for amendments to be made to Schedule 19 to FA 1999 (stamp duty and stamp duty reserve tax on unit trusts).

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7. Subsection (4) amends paragraph 6(5) of Schedule 19 FA 1999 (provisions to apply to certain instruments that are exempt from stamp duty) by inserting a reference to section 96 of the Finance Act 1997 (the relief for demutualisation of insurance companies).
8. Subsection (5) provides that subsection (2) will apply to agreements to transfer chargeable securities made on or after the day the Act is passed.
9. Subsection (6) provides that subsection (4) will apply to surrenders of units on or after the day the Act is passed.

**BACKGROUND NOTE**

10. Section 90 FA 1986 contains exceptions to the charge to stamp duty reserve tax
11. Section 96 FA 1997 provides that stamp duty shall not be payable when the business of a mutually owned insurance company is transferred to a new company under a scheme of demutualisation. To qualify, shares in the new company must be offered to at least 90% of the members of the mutually owned business.
12. Schedule 19 FA 1999 charges stamp duty reserve tax on the surrender of units in a unit trust scheme. The Stamp Duty and Stamp Duty Reserve Tax (Open-ended Investment Companies) Regulations 1997 (SI 1997/1156) extend the charge to shares in open-ended investment companies. Those regulations also ensure that these changes will apply in the same way to units in unit trusts and shares in open-ended investment companies that are transferred on demutualisation of an insurance company.