

EXPLANATORY NOTE

CLAUSE 55: AMOUNT OF TAX CHARGEABLE: GENERAL

SUMMARY

1. This clause sets out the rates at which stamp duty land tax will be charged on the chargeable consideration for a transaction. The charge to tax follows stamp duty in providing that when the consideration exceeds a rate threshold the higher rate applies to the total consideration. This is often called the “slab system”. It is proposed that different rates are provided for residential and non-residential property. Different rules apply for the rental element of a new lease (see clause 56).

DETAILS OF THE CLAUSE

2. Subsection (1) provides that as a general rule, the tax payable will be a percentage of the chargeable consideration for the transaction. Broadly, under the stamp duty land tax regime, consideration comprises money or money’s worth.

3. Subsection (2) provides that the percentage is determined by reference to whether the relevant land is entirely residential property or not. The subsection contains two tables setting out the current thresholds and percentage rates which should be applied to the relevant consideration. Table A applies when the relevant land is entirely residential property and Table B applies to all other transactions. The percentages and thresholds to be contained in the legislation year on year will be a matter for the Chancellor to announce in the Budget.

4. Subsection (3) defines the “relevant land” and the “relevant consideration” for the purposes of subsection (2).

5. Subsection (4) amends these definitions where a transaction is one of a number of linked transactions. The “relevant land” will be all the land comprised in all of the transactions and the “relevant consideration” will be the chargeable consideration for all of the transactions.

6. Subsection (5) states that certain provisions have a special rule which determines the percentage rate to be applied to the chargeable consideration.

7. Subsection (6) states that this clause is modified as set out in clause 56 and Schedule 5 in relation to transactions where the chargeable consideration consists of or includes rent.
8. Subsection (7) defines the “rate of tax”.

BACKGROUND

9. The tables in this important clause set out the percentage rates at which stamp duty land tax will be charged together with the thresholds to which those rates will apply. As with stamp duty, the rate will be determined on a ‘slab’ system based on the chargeable consideration for the transaction, although the method of calculating the chargeable consideration will be different from the current system. It is proposed that there should be two separate tables depending on whether the land being acquired is entirely residential or not. The application of the tables will be modified in specific circumstances including in relation to premiums paid for the grant of leases where if, in addition to the premium, a rent of more than £600 per year is payable, then there is no zero rate band for the premium.

EXPLANATORY NOTE

**CLAUSE 56 AND SCHEDULE 5: AMOUNT OF TAX CHARGEABLE:
RENT**

SUMMARY

1. This clause and schedule set out how to calculate the tax chargeable for the grant of a lease on which rent is to be paid. The Chancellor has indicated that consultation will continue on the structure set out in the Schedule with a view to change before implementation day. Clause 112 provides a power to make such a change.

DETAILS OF SCHEDULE

2. Paragraph 1 introduces the Schedule.
3. Paragraph 2 determines the tax chargeable in respect of the rental element of chargeable consideration as a percentage of the net present value of the rent payable over the term of the lease. The charge is 1% where the net present value of the rent exceeds the relevant zero rate band threshold. The zero rate band threshold differs according to whether or not the subject of the lease is land which is wholly residential property. In the case of residential property, the threshold is £60,000. In the case of non-residential or mixed-use property, the threshold is £150,000. The paragraph also determines how tax shall be charged where the rental lease in question is one of a number of linked transactions.
4. Paragraph 3 sets out the formula to be applied in calculating the net present value of the rent.
5. Paragraph 4 defines rent payable. A sum payable in respect of rent is treated as such even if it is said to include other matters (such as service charges), unless these are separately identified. Where rent is uncertain or contingent, clause 51 applies, except where paragraph (5) provides otherwise, except that no application may be made to defer payment under clause 90. Where the starting rent is to be adjusted for inflation, the rent payable is the starting rent.

6. Paragraph 5 sets out the effect of a provision for a market rent review. When rent reviews are scheduled during the first two years of the lease term, the consideration will be deemed to take this into account and the consideration will therefore be unascertained for the purposes of clause 51. Where a rent review is not scheduled until after two years have expired, the possibility that the rent will be adjusted on review will be disregarded for the purposes of determining the chargeable consideration.
 7. Paragraph 6 defines the term of a lease as that specified in the lease or the period from effective date of grant to the end of contractual term of the lease, whichever is the shorter. Where a lease is granted pursuant to a contract or agreement for lease, the term runs from the date of substantial performance of that contract or agreement to the end of the term specified in the lease. Where a lease renews a previous lease, the term runs from the date of expiry of the previous lease. Break clauses and renewal clauses are disregarded for the purposes of defining the term of a lease.
 8. Paragraph 7 determines that a lease for an indefinite term shall be treated as a lease for a term of 12 years unless it is exempt under subsection (2)(c) of clause 48.
 9. Paragraph 8 determines the temporal discount rate to be applied in arriving at the calculation of net present value of rents.
 10. Paragraph 9 sets out how the charge is to be applied to leases where a premium is payable in addition to rent and provides that, where the annual rent payable exceeds £600, the premium is charged at a minimum 1%. Tax chargeable on a premium is in addition to any tax on rent. Where such a lease is one of a number of linked transactions, only the premium is taken into account in determining the relevant consideration for the purposes of clause 55.
 11. Paragraph 10 provides that where there is an increase in the rent payable under a lease, that increase is treated as the consideration for grant of a new lease. This does not apply where the increase is provided for under the terms of the lease, for example a scheduled rent review.
 12. Paragraph 11 applies the Schedule to leases drafted under Scottish law.
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BACKGROUND

13. This clause and Schedule set out the proposed structure for charging the rental element of new leases. The Chancellor announced in his Budget that this structure will be implemented unless a suitable alternative is identified.

14. The Schedule confirms that any premium on new leases is chargeable in accordance with clause 55, except that, in order to stop a lease being structured to obtain a double advantage of a zero rate band, where the annual rent for the lease exceeds £600, there is no zero rate band for the premium.

EXPLANATORY NOTE

CLAUSE 57 AND SCHEDULE 6: DISADVANTAGED AREAS RELIEF

SUMMARY

1. This clause introduces the schedule which provides for exemption from stamp duty land tax for certain acquisitions of land situated in 1,997 disadvantaged areas in the UK. Broadly exemption applies to all acquisitions of non-residential property, and to acquisitions of residential property for up to £150,000.

DETAILS OF THE CLAUSE

2. Subsection (1) states that Schedule 6 provides for relief in the case of transactions in disadvantaged areas.
3. Subsection (2) describes the Parts of the Schedule.

DETAILS OF THE SCHEDULE

Part 1 Disadvantaged areas

4. Part 1 defines the term 'disadvantaged area'.
5. Paragraph 1 provides that disadvantaged areas are areas designated as such by regulations made by the Treasury for any period specified in the regulations. The Treasury are also able to make regulations providing for different cases and containing such incidental, supplementary, consequential or transitional provisions as appears necessary to the Treasury.
6. Paragraph 2 provides that the regulations designating disadvantaged areas which were in force immediately before the appointed day will have effect as if they were made under paragraph 1.

Part 2 Land wholly situated in a disadvantaged area

7. Paragraph 3 provides that this Part of the Schedule applies to a land transaction where the subject-matter of the transaction is a chargeable interest in land which is wholly within a disadvantaged area.

8. Paragraph 4 exempts the transaction from charge if all of the land is non-residential property. In the case of residential land, the transaction is exempted from charge if

- the consideration does not include rent and does not exceed £150,000; or
- the consideration consists of rent only and the relevant rental value does not exceed £150,000.

9. Paragraph 5 applies in the case of residential land. It states that if the consideration for the transaction includes rent and the relevant rental value does not exceed £150,000, the rent does not count as relevant consideration. Where the consideration for the transaction includes consideration other than rent, if the annual rent does not exceed £600 and the relevant consideration does not exceed £150,000 then the consideration other than rent does not count as chargeable consideration. If the annual rent exceeds £600, consideration other than rent to which the zero rate band would have applied will instead be treated as coming within the 1% band.

10. Paragraph 6 applies where the land is partly non-residential and partly residential and provides that consideration is to be attributed on a just and reasonable basis. The consideration attributable to non-residential property does not count as chargeable consideration.

Part 3 Land partly situated in a disadvantaged area

11. Paragraph 7 sets out that this Part of Schedule applies to land partly situated in a disadvantaged area and partly situated outside a disadvantaged area. The consideration (including rent or annual rent) attributable to land inside and outside the disadvantaged area should be attributed on a just and reasonable basis.

12. Paragraph 8 provides that if all of the land inside the disadvantaged area is non-residential property then the consideration attributable to that part does not count as chargeable consideration.

13. Paragraph 9 applies where all of the land is residential. It states that if the consideration attributable to the land in a disadvantaged area does not include rent and the relevant consideration does not exceed £150,000, or if only rent is payable and the relevant rental value does not exceed £150,000, then none of the consideration counts as chargeable consideration.

14. Paragraph 10 applies where the land is partly non-residential and partly residential. The consideration attributable between the residential property or

land and the non-residential property or land should be attributed on a just and reasonable basis.

Part 4 Interpretation

15. Paragraph 11 defines 'relevant consideration' and 'relevant rental value'.
16. Paragraph 12 states that for the purposes of this Schedule 'rent' has the same meaning as in Schedule 5 and that 'annual rent' has the same meaning as in paragraph 9(2) of the Schedule.

BACKGROUND

17. The clause and Schedule carry forward the existing relief for property in the 1,997 disadvantaged areas in the UK. The way in which the relief applies for the grant of a lease, however, has been amended to reflect the proposed new rate structure for the rental element of lease duty.

18. The relief from stamp duty in disadvantaged areas has been in existence since 30 November 2001 and was extended on 10 April 2003 to limit the £150,000 threshold restriction to residential property only (see clause 75 for the definition of residential).

EXPLANATORY NOTE

CLAUSE 58: PART-EXCHANGE OF RESIDENTIAL PROPERTY

SUMMARY

1. This clause sets out special provisions for the chargeable consideration when a house-building company acquires a dwelling in part exchange for the disposal of a newly constructed dwelling. The individual acquiring the new dwelling must be doing so for his only or main residence and must have occupied the old dwelling as his only or main residence immediately before the acquisition.

DETAILS OF THE CLAUSE

2. Subsection (1) states that where a house-building company acquires a major interest in a dwelling from an individual, the chargeable consideration is deemed to be zero. There are five conditions. Firstly, the individual must be acquiring from the house-building company a new dwelling with a higher market value. Secondly, the individual must have previously occupied the old dwelling as his only or main residence. Thirdly, the dwellings must be exchanged or the consideration for the acquisition of one dwelling must be or include the disposal of the other. Fourthly, consideration other than the old dwelling must be given for the new dwelling. Fifthly, the land being acquired by the house-building company must not exceed the permitted area.

3. Subsection (2) explains that if the area of the old dwelling is larger than the permitted area, the chargeable consideration for its acquisition is not zero but is instead the market value of the old dwelling less the market value of the permitted area.

4. Subsection (3) clarifies that a 'dwelling' includes surrounding land.

5. Subsection (4) defines when a dwelling is a "new dwelling". A "new dwelling" means a building or part of a building that has been constructed or adapted as a single dwelling and that has not been occupied since its construction or adaptation. It does not include land that was already a single dwelling and which has simply been refurbished.

6. Subsection (5) defines a “house-building company” and when a company is connected to such a company.
7. Subsection (6) defines the size of the “permitted area” for the purposes of subsection (2), and subsection (7) sets out how to determine the location of the permitted area in relation to a particular property. These draw on the principal private residence rules for capital gains tax.
8. Subsection (8) explains references to the acquisition of the new dwelling, the acquisition of the old dwelling and the market value of a dwelling or an area of land.

BACKGROUND

9. Clause 47 of the Bill will treat exchanges of property as two (or more) separate transactions, each giving rise to a tax charge. In the explanatory notes to the draft legislation published in November 2002, the Government proposed a special rule for house builders taking a dwelling in part exchange for the disposal of a newly built house. This clause enacts this special rule and sets out the conditions for the rule to apply.

EXPLANATORY NOTE

CLAUSE 59: RELOCATION RELIEF

SUMMARY

1. This clause sets out special provisions for the chargeable consideration when an employer or a relocation company acquires a dwelling in connection with the relocation of an individual's employment. The dwelling must have been the individual's only or main residence at some time during the year prior to the acquisition.

DETAILS OF THE CLAUSE

2. Subsection (1) states that where an employer or relocation company acquires a major interest in a dwelling from an employee, the chargeable consideration is deemed to be zero. There are four conditions. Firstly, the employee must have occupied the dwelling as his only or main residence at some time during the period of one year ending with the date of the acquisition. Secondly, the acquisition must be made in connection with a relocation of his employment. Thirdly, the consideration for the acquisition must not exceed the market value of the dwelling. Fourthly, the land being acquired by the house-building company must not exceed the permitted area. "Employee" is defined in clause 121.

3. Subsection (2) explains that if the area of the dwelling is larger than the permitted area, the chargeable consideration for its acquisition is not zero but is instead the market value of the dwelling less the market value of the permitted area.

4. Subsection (3) defines a 'relocation of employment'.

5. Subsection (4) sets out when an employee's change of residence can be said to 'result from' his relocation of employment. In connection with this, it also defines 'new place of employment'.

6. Subsection (5) defines 'relocation company' and explains when a company is "connected" to a relocation company.

7. Subsection (6) clarifies that a ‘dwelling’ includes surrounding land, and subsection (7) defines the size of the “permitted area” for the purposes of subsection (2). These draw on the capital gains tax rules for principal private residences.

8. Subsection (8) sets out how to determine the location of the permitted area in relation to a particular property.

9. Subsection (9) explains references to the acquisition of a dwelling and the market value of a dwelling or an area of land. It also states that references to an employee include a prospective employee.

BACKGROUND

10. The current successive transfer (or subsale) relief under stamp duty will not be reproduced under stamp duty land tax (see clause 45). Where, to facilitate a relocation of employment, an employer offers to purchase an employee’s current residence (directly or via a relocation company), that transaction is exempt from charge. Without a special rule, stamp duty land tax would be payable on the acquisition of the dwelling by the employer or relocation company and again when the dwelling was sold on. This is so as not to inhibit the transfer of employees around the country which an employer considers expedient, and is prepared to fund, thus assisting with the free movement of labour.

11. The relevant definitions of relocation of employment and related expressions are based on the rules in the Income Tax (Earnings and Pensions) Act 2003.

EXPLANATORY NOTE

CLAUSE 60: COMPULSORY PURCHASE TO FACILITATE DEVELOPMENT

SUMMARY

1. This clause enacts a relief for acquisitions of land which has been the subject of a compulsory purchase order to facilitate development. The purchaser must be the entity that made the order and the developer must be another person.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that a compulsory purchase made to facilitate development is exempt from charge.

3. Subsection (2) defines when “compulsory purchase to facilitate development” occurs. It is essential that the purchaser under the transaction is the entity that made the compulsory purchase order and that the developer is another person.

4. Subsection (3) states that it does not matter how the acquisition is effected. It is only necessary for a compulsory purchase order to have been made in respect of the land before it is acquired under the transaction to be relieved. It is not necessary for the acquisition of the interest in land to be effected in a particular way, for example (in England and Wales) by way of a notice to treat or vesting order.

5. Subsection (4) defines “vesting order” in Northern Ireland.

6. Subsection (5) defines “development”.

BACKGROUND

7. Where a person (usually a local planning authority) acquires an interest in land under compulsory purchase powers, or following the service of a compulsory purchase order, there is a danger of a double charge to stamp duty land tax if the authority acquires the land only to pass it on to a developer. This relief aims to relieve the transaction to the authority while leaving the transfer on to the developer subject to stamp duty land tax as usual.

EXPLANATORY NOTE

CLAUSE 61: COMPLIANCE WITH PLANNING OBLIGATIONS

SUMMARY

1. This clause provides for a relief where a land transaction is entered into in order to comply with a planning obligation, provided that the purchaser is one of a defined class of public authorities.

DETAILS OF THE CLAUSE

2. Subsection (1) comprises the main relief. A transaction will be exempt when it is entered into with a public authority in order to comply with a planning obligation, subject to certain conditions being satisfied.
3. Subsection (2) defines “planning obligation” and when the “modification” of a planning obligation occurs.
4. Subsection (3) lists the bodies within the definition of “public authorities” and allows the Treasury to add bodies to the list.

BACKGROUND

5. The clause enacts a relief for compliance with planning obligations. It prevents a possible double charge that might in practice fall on developers. In order to comply with a planning obligation, a developer might acquire land for a public facility or amenity (paying stamp duty land tax on the acquisition) and then, in a further chargeable transaction, dispose of the land to the public authority that will run the facility. Although the public authority will be liable for any stamp duty land tax on that latter transaction, it will usually seek reimbursement from the developer as part of the arrangements for the grant of planning permission.

EXPLANATORY NOTE

**CLAUSE 62 AND SCHEDULE 7: GROUP RELIEF, AND
RECONSTRUCTION OR ACQUISITION RELIEF**

SUMMARY

1. This clause provides for Schedule 7 which gives relief for land transfers within groups of companies, and on company reconstructions and acquisitions where interests in land are transferred in exchange for shares, subject to conditions and anti-avoidance rules.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for Schedule 7.
3. Subsection (2) describes the content of the Schedule.
4. Subsection (3) provides that any relief under the Schedule must be claimed in a return.

DETAILS OF THE SCHEDULE

Part 1: Group relief

5. Part 1 provides relief (and related anti-avoidance rules) for the intra-group transfer of property held by companies. If the conditions are met full relief from stamp duty land tax is due.
6. Paragraph 1 provides a relief from stamp duty land tax for acquisitions of property by companies (“bodies corporate”) within groups. The relief must be claimed in a return and is subject to anti-avoidance provisions and a recovery where the acquiring company leaves the group within 3 years of the acquisition.
7. The paragraph defines what is meant by a “group” by reference to provisions in ICTA.

8. Paragraph 2 provides anti-avoidance rules which restrict the availability of group relief. It applies where different types of arrangements are entered into relating to control of the companies, the provision of consideration from outside the group, or where the vendor and purchaser are to cease being members of the same group. Where such arrangements exist at the effective date of the transaction group relief is not due.

9. Paragraph 3 withdraws group relief if, following a successful claim to group relief, the purchaser ceases to be a member of the same group as the vendor within 3 years of the date of the transaction (or under arrangements made during the 3 year period).

10. This paragraph is subject to paragraph 4.

11. Paragraph 4 provides exceptions from the withdrawal of group relief under paragraph 3 for certain cases where companies leave groups, and related anti-avoidance provisions.

12. These are:

- where the purchasing company which claimed group relief leaves the group is that the vendor leaves the group but not the purchaser, or
- where the de-grouping arises because of anything done in the course of winding up the vendor, or
- where there is an acquisition of shares in the purchaser by another company to which section 75 of Finance Act 1986 applies (subject to exceptions) and the purchaser leaves the group as a result.

13. Paragraph 5 provides that the Inland Revenue can, if the relief chargeable under paragraph 3 is not paid within 6 months, recover the tax due from the vendor, another group company or a controlling director. It also contains relevant definitions.

14. Paragraph 8 provides that the Inland Revenue can serve notice on a person within paragraph 7(2) requiring the payment of any unpaid amount within 30 days.

Part 2: Reconstruction and acquisition relief

15. Part 2 provides reliefs (and related anti-avoidance rules) for the transfer of property held by companies where the consideration is shares. Relief from all the stamp duty land tax due is provided if the transfer of the property is under a scheme of reconstruction in exchange for shares. Where the property forms part of an undertaking acquired for consideration of at least 90% shares, the rate of tax is reduced to 0.5%.

16. Paragraph 7 provides for a relief from stamp duty land tax where a company acquires the whole or part of an undertaking of another company

under a scheme of reconstruction of a company. Where the undertaking transferred includes an interest in land and the conditions are met the paragraph gives relief from stamp duty land tax.

17. Paragraph 8 provides a relief by reduction in the rate of tax to 0.5% where a land transaction is entered in to as part of an acquisition of an undertaking of a company in exchange for shares, or shares and cash up to 10% of the nominal value of the shares.

18. Paragraph 9 withdraws relief where control of the acquiring company changes within 3 years beginning with the effective date of the transaction (or there are arrangements under which control will change after three years which are entered into within the 3 year period). This paragraph is subject to paragraph 10.

19. Paragraph 10 provides exceptions from the withdrawal of reconstruction or acquisition relief are not withdrawn for five types of transaction under which control of the acquiring company can change, and related anti-avoidance rules.

20. The five cases are:

- where control changes as a result of a share transaction which is a type of transaction that is of the type dealt with in paragraph 4 of Schedule 3 (transactions in connection with divorce etc)
- where control changes as a result of a share transaction which is a type of transaction that is of the type dealt with in paragraph 5 of Schedule 3 (transactions which very dispositions following death).
- where control changes as result of an exempt intra-group transfer of shares and “associated” companies relief (group relief) under section 42 Finance Act 1930 or section 11 of the Finance Act (Northern Ireland) 1954 applies.
- where control changes as a result of a transfer to another company to which share acquisition relief applies (relief under section 77 Finance Act 1986)
- where control changes as a result of a loan creditor becoming or ceasing to be treated as having control.

21. Paragraph 11 provides anti-avoidance rules for the withdrawal of reconstruction or acquisition relief on a subsequent non-exempt transfer. This is when there is no withdrawal of relief because of the exceptions in paragraph 10(4) or (5) (which deal with the change of control as a result of exempt intra-group transfer or as a result of a transfer to which acquisition relief applies) and subsequent to that transfer there is a transfer to another person which changes the control of the acquiring company. When the conditions in this paragraph are met the reconstruction or acquisition relief is withdrawn.

22. Paragraph 12 provides for the recovery of reconstruction relief or acquisition relief from another group company or controlling director if tax due under paragraph 9 or 11 is unpaid six months after the date it is due.

23. Paragraph 13 provides that the Inland Revenue can serve notice on a person within paragraph 12(2) requiring payment of any unpaid amount within 30 days.

BACKGROUND

24. Part 1 is based on the current reliefs from stamp duty in section 42 of Finance Act 1930 (and section 11 of the Finance Act (Northern Ireland) 1954, section 27 of the Finance Act 1967, section 151 of the Finance Act 1995 and section 111 of and Schedule 34 to the Finance Act 2002 (as amended by clause 126 of this Bill)). These provide relief from stamp duty for instruments for the conveyance or sale of property between “associated companies”.

25. Part 2 is based on the current stamp duty reliefs in sections 75 and 76 of the Finance Act 1986 and section 113 of and Schedule 35 to the Finance Act 2002 (as amended by clause 127 of this Bill).

26. This Schedule adds a new anti-avoidance rule providing a recovery of reconstruction relief where control changes within 3 years and applies an arrangements test to the three year recovery period not just at the effective date of the transaction.

27. The current law will continue to provide relief from stamp duty for the acquisition of shares from an associated company or on company re-organisations where interests in land are not transferred.

EXPLANATORY NOTE

CLAUSE 63: DEMUTUALISATION OF INSURANCE COMPANY

SUMMARY

1. This clause provides a relief from stamp duty land tax for land transactions connected to the transfer of the business of a mutual insurance company to a company with share capital as part of the demutualisation of the insurance company.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that a transaction is exempt if it is part of a “qualifying transfer” of the business of a mutual insurance company to a company with share capital.

3. Subsection (2) defines “qualifying transfer”. It is a transfer:

- of insurance business under an insurance business transfer scheme, or
- of a business of a general insurance company which is carried on in the UK through a permanent establishment in the UK following authorisation outside the UK under the new life assurance directive or the third non-life assurance directive.

4. This is subject to the conditions in subsections (3) and (4) being met.

5. Subsection (3) provides a condition that shares in the issuing company must be offered to at least 90% of the persons who are members of the mutual immediately before the transfer.

6. “The issuing company” is defined in subsection (2) to be the acquiring company or a wholly owned subsidiary of it.

7. Subsection (4) provides a condition that under the scheme any shares that have not been offered to the public must be offered to

- members of the mutual
- persons entitled to become members of the mutual
- employees and former employees of the mutual (including a wholly owned subsidiary).

8. Subsection (5) permits the Treasury to make regulations to amend the percentage in subsection (3) and to treat any particular class of persons as being members of the mutual.
9. Subsection (6) defines “wholly owned subsidiary”.
10. Subsection (7) contains definitions of various terms used in the clause.

BACKGROUND

11. This clause brings into stamp duty land tax the relief in section 96 of Finance Act 1997. It provides relief from stamp duty land tax for transfers of land etc connected with the demutualisation of a mutual insurance company, and has no changes in the way the law works from section 96.
12. Section 96 of Finance Act 1997 will continue to give relief from stamp duty for other matters connected with demutualisation.
13. This clause incorporates the term “permanent establishment” which is defined in clause 147 (meaning of “permanent establishment”).

EXPLANATORY NOTE

CLAUSE 64: DEMUTUALISATION OF BUILDING SOCIETY

SUMMARY

1. This clause provides a relief from stamp duty land tax for land transactions which are part of the demutualisation of a building society.

DETAILS OF THE CLAUSE

2. This clause provides an exemption from stamp duty land tax for a land transaction which takes place because of the transfer of the business of a building society to a company under section 97(6) or (7) of the Building Societies Act 1986.

BACKGROUND

3. This clause is based on section 102 of the Building Societies Act 1986 and extends that exemption to cover stamp duty land tax.
4. Section 102 will continue to provide relief from stamp duty for the transfers of shares and securities to a company.
5. Section 97 of the Building Societies Act 1997 provides for the demutualisation of a building society by the transfer of its business to a commercial company.

EXPLANATORY NOTE

CLAUSE 65: INCORPORATION OF LIMITED LIABILITY PARTNERSHIP

SUMMARY

1. This clause provides for an exemption from stamp duty land tax where land is transferred to a limited liability partnership in connection with its incorporation and where certain conditions are satisfied.

DETAILS OF THE CLAUSE

2. Subsection (1) enacts the exemption from charge where land is transferred to a limited liability partnership (LLP) in connection with its incorporation.

3. Subsection (2) states the first condition to be satisfied. The effective date of the transaction must be no more than one year after the date of the incorporation of the LLP.

4. Subsection (3) states the second condition to be satisfied. The transferor must be a partner in a partnership at the relevant time and that partnership must have the same members as the LLP. The interest transferred must have been previously held on bare trust for one or more of the partners.

5. Subsection (4) states the third condition to be satisfied. The members of the LLP must acquire the interest in land in the same proportions as it was held by the members of the partnership at the relevant time. If this is not the case, any differences must not be for the purpose of tax avoidance.

6. Subsection (5) defines “the relevant time”.

7. Subsection (6) defines a “limited liability partnership”.

BACKGROUND

8. This provision re-enacts the relief from stamp duty in section 12 of the Limited Liability Partnerships Act 2000 with minor amendments.

EXPLANATORY NOTE

CLAUSE 66: TRANSFERS INVOLVING PUBLIC BODIES

SUMMARY

1. This clause provides a general exemption from stamp duty land tax where land is transferred from one public body to another under a statutory reorganisation. It also gives the Treasury a power to exempt by Statutory Order other land transfers made under statutory authority where either the purchaser or the vendor is a public body. This new power should eliminate the need, in many cases, to make special provision for an exemption from stamp duty land tax within the relevant Act.

DETAILS OF THE CLAUSE

2. Subsection (1) describes the type of transaction under a statutory reorganisation which is exempt under the clause.
3. Subsection (2) provides that the Treasury may by order provide that certain other land transactions which do not fall under subsection (1) are exempt.
4. Subsection (3) defines what is meant by a reorganisation for the purposes of subsection (1).
5. Subsection (4) defines what is meant by “statute” for the purposes of this clause.
6. Subsection (5) lists those bodies which are to be regarded as a “public body” for the purposes of this clause.
7. Subsection (6) includes in references to a public body for the purposes of this clause a company which is wholly-owned by such a body or a wholly-owned subsidiary of such a company.
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BACKGROUND

8. Until now, where an Act of Parliament provided for transfers of land between, to or from public bodies, it has been necessary to include a special provision in the Act concerned if it was intended that such transfers should not give rise to a liability to stamp duty. This clause means that it will not now be necessary to include such provisions in the primary Act in order to secure relief for these transfers from stamp duty land tax.

9. In many cases where the Act provides for a statutory reorganisation exemption will apply automatically. For other transfers which are not necessarily connected with a reorganisation, it will be possible to exempt the transaction by means of a statutory Order.

10. This clause will apply in many cases where an Act already provides for exemption from stamp duty and in these cases it will give an analogous relief from stamp duty land tax. It will also apply where future Acts provide for transfers of land between public bodies.

EXPLANATORY NOTE

**CLAUSE 67: TRANSFER IN CONSEQUENCE OF REORGANISATION
OF PARLIAMENTARY CONSTITUENCIES**

SUMMARY

1. **This clause** exempts transfers of land between Parliamentary constituencies when those transfers are undertaken to give effect to an Order under the House of Commons (Redistribution of Seats) Act 1949.

DETAILS OF THE CLAUSE

2. Subsection (1) describes the type of transaction that is exempt.
3. Subsection (2)(a) defines “the date of change” in relation to any order as mentioned in subsection (1)(a).
4. Subsection (2)(b) defines “former parliamentary constituency” in relation to any order as mentioned in subsection (1)(a).
5. Subsection (2)(c) defines “new parliamentary constituency” in relation to any order as mentioned in subsection (1)(a).
6. Subsection (3)(a) defines “existing local constituency association” for the purposes of this clause.
7. Subsection (3)(b) defines “new association” in relation to subsection (2)(a).
8. Subsection (4)(a) defines “local constituency association” in relation to subsection (2)(a).
9. Subsection (4)(b) defines “related body” in relation to such an association for the purposes of this clause.
10. Subsection (5) defines a “new association” for the benefit of this clause.

BACKGROUND

11. This provision reproduces an equivalent relief for stamp duty in section 15 Finance (No 2) Act 1983.

EXPLANATORY NOTE

CLAUSE 68 AND SCHEDULE 8: CHARITIES RELIEF

SUMMARY

1. This clause provides for Schedule 8 which gives relief from stamp duty land tax for acquisitions by charities.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for Schedule 8.
3. Subsection (2) provides that all claims to relief under the Schedule must be made in a land transaction return.

DETAILS OF SCHEDULE 8

4. Paragraph 1 states that a transaction will be exempt from charge if the purchaser is a charity, provided that the two conditions in the remainder of the sub-paragraph are met. Firstly, the purchasing charity must intend to hold the land for qualifying charitable purposes, which are defined. Secondly, the purchasing charity must not be entering into the land transaction for the purpose of avoiding tax under the stamp duty land tax regime. The paragraph also defines a 'charity'.
 5. Paragraph 2 provides for charities relief to be withdrawn where a charity claims the relief in relation to a land transaction and, within three years of the transaction, the purchaser ceases to be a charity or the land is used otherwise than for certain charitable purposes. Relief may also be lost if these events occur more than three years after the transaction but pursuant to arrangements made during the three-year period. If the relief is withdrawn then the charity will be liable to pay the charge that it would have paid had charities relief not been available.
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BACKGROUND

6. This clause reproduces the existing relief for charities under stamp duty, but introduces extra safeguards to counter avoidance schemes where little-known charities are used as vehicles for tax avoidance (for example, where a charity holds land on trust for the true purchaser). The clause prevents charities from obtaining relief unless the land is to be used for genuine charitable purposes.

7. This clause provides for a clawback if charities relief is granted but the purchasing charity subsequently ceases to be a charity or uses the property otherwise than for charitable purposes. The relief is only withdrawn if the charity still owns the land at the time of the disqualifying event. Charities will therefore be free to dispose of their land within the three-year period without the clawback applying. They can also allow land to fall vacant without the clawback applying.

EXPLANATORY NOTE

**CLAUSE 69: ACQUISITION BY BODIES ESTABLISHED FOR
NATIONAL PURPOSES**

SUMMARY

1. This clause provides for a relief where the purchaser is one of a prescribed list of bodies established for national purposes.

DETAILS OF THE CLAUSE

2. The clause lists the bodies who will be entitled to a relief if they are the purchaser under a land transaction.

BACKGROUND

3. This clause lists the bodies set out in clause 507 of ICTA and states that where one of them is the purchaser under a land transaction, that transaction will be exempt. Generally, these are bodies established for purposes which are in the national interest but which are not charities due to their only being semi-independent from central government.

EXPLANATORY NOTE

**CLAUSE 70 AND SCHEDULE 9: RIGHT TO BUY TRANSACTIONS,
SHARED OWNERSHIP LEASES ETC**

SUMMARY

1. This clause provides for Schedule 9, which introduces rules for transactions that take place under the “right to buy”, under shared ownership leases schemes, under rent to mortgage schemes and under rent to loan schemes.

DETAILS OF THE CLAUSE

2. This clause provides for Schedule 9.

DETAILS OF THE SCHEDULE

3. Paragraph 1 states that in the case of right to buy transactions (as defined in this paragraph) section 51(1) does not apply and also excludes any consideration that may become due or becomes due and defines a “right to buy transaction”. Paragraph 1 also provides a list of relevant public sector bodies and describes the circumstances in which a transfer of a dwelling, or the grant of a lease of a dwelling, is made in pursuance of the preserved right to buy for the purposes of subsection. Finally, it excludes from the chargeable consideration a grant made under section 20 or 21 of the Housing Act 1996 for certain transactions.

4. Paragraph 2 details the stamp duty land tax treatment for the use of certain types of shared ownership leases. It allows for an (irrevocable) election to be made for the stamp duty land tax to be calculated by reference to the market value of the dwelling if certain specified conditions are met.

5. Paragraph 3 exempts the transaction to the lessee under the terms of a lease to which paragraph 2 applies where an election was made under that paragraph and where stamp duty land tax was paid in accordance with that paragraph.

6. Paragraph 4 details the stamp duty land tax treatment for the use of certain types of shared ownership leases where staircasing provisions are included in the lease to allow the freehold to be purchased in steps. It allows for an (irrevocable) election to be made for the stamp duty land tax to be calculated by reference to the minimum rent and the premium obtainable on the open market if certain specified conditions are met.

7. Paragraph 5 provides a definition of “qualifying body” and the conditions that must be met in order for the lease to be described as being granted in pursuance of the preserved right to buy for use in paragraphs 2 and 4.

8. Paragraph 6 introduces rules that determine the consideration for transactions that take place under the “rent to mortgage” scheme and the “rent to loan” scheme (as defined in this paragraph). It provides that on a transaction under rent to mortgage the stamp duty land tax is chargeable on the price that would have been payable on a purchase of the dwelling if the tenant had been paying for it all at once or the grant of a lease of the dwelling to the tenant. Further to this it provides that on a transaction under rent to loan the stamp duty land tax is chargeable on the price that would have been payable on a purchase of the dwelling if the tenant had been paying for it all at once.

BACKGROUND

9. Paragraph 1 is based on the existing reliefs from stamp duty in section 107 of the Finance Act 1981 and section 110 of the Finance Act 1984.

10. Paragraphs 2-5, concerning shared ownership leases, are based on the existing reliefs from stamp duty section 97 of the Finance Act 1980 and section 108 of the Finance Act 1981.

11. A shared ownership or equity sharing scheme is an arrangement which enables a tenant to buy (sometimes at less than market value) gradually from a housing association by not having to pay the full price initially. Mainly local authorities, new town development corporations and housing associations employ the scheme, however, this list is not exhaustive - other bodies use the schemes.

12. Under the scheme the housing association grants a long lease for a premium equivalent to the value of the share acquired, with rent payable on the remaining portion. Some leases allow the tenant to acquire the reversion or a full leasehold interest so that he can become the freehold or leasehold owner in

due course. Others deny the right to acquire the freehold reversion for a maximum proportion on leasehold

13. On occasion the purchase of the freehold may not take place in one step but may be purchased in two or more steps depending on the terms of the shared ownership lease. These are known as the “staircasing provisions”. For example the purchaser originally buys a 50% share and pays rent for the other half, he may pay at a later date an amount to acquire an additional 25%, and as a consequence he has his rent reduced.

14. Paragraph 6 is based on the existing relief from stamp duty sections 202 and 203 of Finance Act 1993. The “rent to mortgage” scheme and the “rent to loan” scheme allow public sector tenants in England and Wales, and in Scotland, wishing to purchase their homes to pay for them over a period. Because of the way that the schemes work, without a special provision, the one percent stamp duty land tax rate could apply to houses worth less than the £60,000 threshold. The effect of the clause is that the stamp duty land tax on houses acquired under the schemes will be chargeable on the same basis as if the purchaser had paid for the property all at once.