

Land and Buildings Transaction Tax: Proposed Legislation for Green Freeports Relief

March 2023

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1. Introduction

Background

1.1 The Scottish and UK governments have worked together constructively to develop a Green Freeport model that reflects the unique conditions in Scotland, and ensures businesses, ports and communities across Scotland can benefit from the Green Freeport opportunity.

1.2 On 13 January 2023, following a rigorous assessment and selection process, the Scottish and UK governments announced that Inverness and Cromarty Firth Green Freeport and Forth Green Freeport had been selected as Green Freeports.

1.3 In the 2022 Green Freeport bidding prospectus, the Scottish Government set out the intent to offer a support package of tax reliefs and other economic levers to support Green Freeports in achieving the following objectives:

- a. promote regeneration and high-quality job creation
- b. promote decarbonisation and a just transition to a net zero economy
- c. establish hubs for global trade and investment
- d. foster an innovative environment

1.4 In addition to the core Green Freeport objectives, the overarching policy intent of the Land and Buildings Transaction Tax (LBTT) relief is to promote long-term investment in underdeveloped tax sites with economic potential. The Scottish Government accordingly expects that, in a number of instances, this would be one of the first tax reliefs claimed within a Green Freeport site.

Purpose

1.5 This consultation seeks views on proposed legislative amendments to the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the LBTT Act”), including the addition of a new schedule 16D to the Act. These will provide a relief from LBTT for qualifying non-residential transactions within a designated Green Freeport tax site.

Scope

1.6 This consultation will run for 8 weeks and offers an opportunity to comment on the draft secondary legislation, so as to ensure that it provides for the intended policy intent and does not create unintended consequences.

1.7 Views are also sought on a range of issues in order to inform consideration of any relevant impact assessments. Responses are encouraged from all interested parties.

1.8 In addition to inviting written responses, the Scottish Government intends to meet with relevant stakeholders to discuss the proposed amendments.

1.9 The Scottish Government will carefully consider all responses to the consultation, prior to finalising decisions on legislation for introduction to the Scottish Parliament.

1.10 Subject to the process of Parliamentary scrutiny, any changes would have prospective effect from the coming into force date of the legislation.

2. Overview and Eligibility for the Relief

2.1 This Chapter provides commentary on the circumstances and conditions in which the proposed relief would be available for qualifying transactions. It also outlines the circumstances in which clawback provisions would apply if certain conditions are not met or maintained within a defined period following the relief being claimed.

2.2 The availability of full or partial relief will require a number of conditions to be met at the effective date of the transaction.

2.3 Full or partial relief from LBTT will be available where a buyer, or buyers, enter into a qualifying land transaction in which the relevant land or property is situated within a designated Green Freeport tax site and is used, or is intended to be used, in a qualifying manner.

2.4 To provide for a consistency of offer across the UK, the Scottish Government intends that the LBTT relief offered in Green Freeports will be broadly equivalent to the Stamp Duty Land Tax (SDLT) relief offered to Freeports in England.

2.5 The relief will be administered by Revenue Scotland in the same way as existing LBTT reliefs. The process for claiming relief is discussed in more detail in Chapter 3.

Time limits

2.6 The Scottish Government intends that relief will be available for qualifying transactions with an effective date falling within a specified period of five years, running from the coming into force date of the legislation

2.7 This ensures that the LBTT benefit offered in Green Freeports is broadly equivalent to the SDLT relief offered to Freeports in England which was also available over a five-year period.

2.8 The relevant time period will be set out in paragraphs 2(1)(b) and 3(1)(b) of the new schedule 16D.

Qualifying Green Freeport Land

2.9 For the purposes of the relief, qualifying Green Freeport land will be land:

- a. Situated within a designated Green Freeport tax site, as defined by relevant regulations laid under powers conferred by section 113 of the Finance Act 2021; and,
- b. Which the buyer intends to use in a qualifying manner (see discussion below).

2.10 These conditions must apply on the effective date of the transaction for relief to be claimed.

2.11 Relevant provisions are set out at paragraph 6 of schedule 16D, set out in article 2(5) of the draft Order attached at Annex A.

Questions

1. Do you agree that the provisions as drafted work as intended?
2. If not, what amendments would you propose to the draft legislation and on what basis?

Qualifying transaction land

2.12 Qualifying transaction land for the purposes of this relief means the chargeable interest acquired through a land transaction or contract.

2.13 Relevant provisions are set out at paragraph 5 of schedule 16D, as set out in article 2(5) of the draft Order attached at Annex A.

Questions

3. Do you agree that the provisions as drafted work as intended?
4. If not, what amendments would you propose to the draft legislation and on what basis?

Qualifying manner

2.14 Relief will be available, in part or in full, for qualifying transaction land which is used, or is intended to be used, in a 'qualifying manner'. This broadly means land or property used for a commercial activity or trade.

2.15 Use of land in a qualifying manner for the purposes of the relief will include use in one or more of the following ways:

- a. Use by the buyer, or a person connected with the buyer, in the course of carrying out a commercial trade or profession;
- b. The development, or redevelopment, of the land by the buyer, or person connected with the buyer, in the course of a commercial trade or profession;
- c. Use by the buyer, or a person connected with the buyer, in the course of carrying out a commercial trade or profession as a source of rent.

2.16 Use of land in the following ways will not be considered use in a 'qualifying manner':

- a. Use as a dwelling, or garden or grounds of a dwelling;
- b. Developed or redeveloped to become residential property;
- c. Exploited as a source of rent for a dwelling or as the garden or grounds of a dwelling;
- d. Held as stock of a business for sale or resale without development or redevelopment.

2.17 Please note that further information on these points will be provided in subsequent Green Freeport tax guidance published by Revenue Scotland.

2.18 Relevant provisions are set out at paragraph 7 of schedule 16D, as set out in article 2(5) of the draft Order attached at Annex A.

Questions

5. Do you agree that the provisions as drafted work as intended?
6. If not, what amendments would you propose to the draft legislation and on what basis?

Ancillary land

2.19 The Scottish Government intends that relief may also be claimed in respect of land which is ancillary to (i.e., providing necessary support to) land within a designated tax site and for which relief has been claimed. Examples of ancillary land could include, for example, a warehouse access road or a car park.

2.20 Relevant provisions are set out at paragraph 7(3) of schedule 16D, as set out in article 2(5) of the draft Order attached at Annex A.

Questions

7. Do you agree that the provisions as drafted work as intended?
8. If not, what amendments would you propose to the draft legislation and on what basis?

Full Relief

2.21 Where all other relevant conditions are met, the Scottish Government intends that full relief from LBTT would be available where at least 90% of the chargeable consideration (as defined in schedule 2 of the LBTT Act) for a qualifying transaction is attributable to qualifying Green Freeport land.

2.22 For example:

- a) Company A enters into a qualifying transaction with an effective date of 1 May 2025. For the purposes of this example, the effective date falls within the specific period where relief is available.
- b) 95% of the chargeable consideration relates to the lease of premises situated within a designated tax site, whereas 5% relates to the lease of a small office space within the Green Freeport boundary but outwith the designated tax site.

- c) As more than 90% of the chargeable consideration is attributable to qualifying transaction land (see paragraph 2.12), Company A is entitled to **full** relief.
- d) Company A must submit an LBTT return, including the amount of relief claimed within 30 days beginning with the day after the effective date of the transaction, in this case, by 1 June 2025.

2.23 Relevant provisions are set out in paragraph 2 of schedule 16D, as set out at article 2(5) of the draft Order in Annex A.

Questions

- 9. Do you agree that the provisions as drafted achieve the policy intent of allowing full relief for qualifying transactions where at least 90% of chargeable consideration is attributable to qualifying transaction land?
- 10. If not, what amendments would you propose to the draft legislation and on what basis?

Partial Relief

2.24 The Scottish Government's intent is that, where all other relevant conditions are met, partial relief will be available where less than 90% but more than 10% of the chargeable consideration for the qualifying transaction is attributable to qualifying Green Freeport land. This helps to ensure that the relieved transaction is consistent with the overall Green Freeport programme objectives.

2.25 Relief would be given in relation to the relevant proportion on a just and reasonable basis. This is discussed in more detail in Section 3 below. Claimants must be able to sufficiently evidence the basis for any just and reasonable apportionment carried out.

2.26 This approach aligns with the SDLT relief already available in Freeports in England and will help to ensure that the relief is properly targeted and allocated.

2.27 For example:

- a. Company B enters into a qualifying transaction with an effective date of 1 May 2025.
- b. 60% of the chargeable consideration relates to the lease of premises situated within a designated tax site, whereas 40% relates to the lease of office space within the Green Freeport boundary but outwith the designated tax site.
- c. As more than 10% but less than 90% of the chargeable consideration is attributable to qualifying Green Freeport land, Company B is entitled to partial relief.
- d. This is proportionate to the amount of chargeable consideration that relates to the land or property situated within the designated tax site. In this case, a 60% reduction to the LBTT liability can be claimed.

- e. Company B must submit an LBTT return setting out the amount of relief claimed within 30 days beginning with the day after the effective date of the transaction, in this case, by 1 June 2025.

2.28 Relevant provisions are set out at paragraph 3 of Schedule 16D, as set out in paragraph 2(5) of the draft Order attached at Annex A

Questions

- 11. Do you agree that the provisions as drafted achieve the policy intent for partial relief where between 10% and 90% of chargeable consideration is attributable to qualifying Green Freeport land?
- 12. If not, what amendments would you propose to the draft legislation and on what basis?
- 13. Are there any specific scenarios to which the Scottish Government should give careful consideration to the arrangements for partial relief?

Attributing chargeable consideration to land

2.29 As noted above in relation to the claiming of partial relief, the Scottish Government intends that the amount of chargeable consideration attributable to different elements of the subject-matter of the transaction must be determined on a just and reasonable basis, with reference to the qualifying Green Freeport land that is intended to be used in a qualifying manner.

2.30 This approach is intended to help ensure that claimants benefit from the correct amount of relief, and that any relief relates to land used in a way that helps achieve the overarching Green Freeport policy objectives.

2.31 If, for example, the relevant transaction land is wholly within a Green Freeport tax site but only 50% of the consideration is attributable to land intended to be used in a qualifying manner then relief will only be available in respect of that 50%.

2.32 Relevant provisions are set out paragraph 4 of schedule 16D of Annex A. The provisions discuss the attribution of chargeable consideration to land in the context of paragraph 6(1)(b) of schedule 16D.

Questions

- 14. Do you agree that the provisions as drafted achieve the policy intent of requiring just and reasonable apportionment of consideration to land?
- 15. If not, what amendments would you propose to the draft legislation and on what basis?

Alternative property finance arrangements

2.33 Alternative property finance arrangements are structured using contracts, or combinations of contracts, which satisfy the requirements of Shari'a law. Financial institutions in the UK offer Shari'a law-compliant alternative finance products that are economically equivalent to conventional banking products but do not involve interest or speculative returns.

2.34 Where a transaction is entered into via an alternative property finance arrangement, relief will be determined by the circumstances of the person granted an interest in land under the 'second transaction', rather than the financial institution purchasing a major interest in land under the 'first transaction'.

2.35 Withdrawal of relief will be determined by the circumstances or actions of the person granted an interest under the second transaction. Accordingly, any tax and interest liability following withdrawal of relief will be the liability of that person.

2.36 Relevant provisions are set out at paragraph 11 of schedule 16D, in Annex A. The provisions act to allow relief to apply to the 'second transaction', where all relevant conditions have been met, by providing that references to the buyer are to be treated as references to the person who has been granted an interest in land under the 'second transaction'.

Questions

16. Do you agree that the provisions as drafted work as intended in terms of the provision or withdrawal of relief under alternative finance arrangements?

17. If not, what amendments would you propose to the draft legislation and on what basis?

3. Claiming the Relief

Claims giving effect to relief

3.1 As with all reliefs, the Scottish Government intends for relief to be claimed via the LBTT return. Relief will be required to be claimed in the first LBTT return made in relation to a transaction.

3.2 Relevant provisions are set out at article 2(2) of the draft Order set out in Annex A. The provisions will amend section 27(1) of the LBTT Act to include reference to new schedule 16D.

Questions

18. Do you agree that the provisions as drafted achieve the policy intent?

19. If not, what amendments would you propose to the draft legislation and on what basis?

Deadline for returns

3.3 Qualifying transactions will be notifiable transactions under section 30 of the LBTT Act, requiring a return to be made within the time limit set out in section 29.

Additional return required where relief is withdrawn

3.4 In the event that relief is withdrawn under the clawback provisions, a further return will be required to be made.

3.5 Relevant provisions are set out at article 2(3) of the draft Order set out in Annex A. The provisions will amend section 33(1) of the LBTT Act to incorporate details of the new schedule giving effect to the relief, with section 33(4) amended to direct users to the provisions of that schedule.

Questions

20. Do you agree that the provisions as drafted achieve the policy intent of requiring an additional return where relief is withdrawn?

21. If not, what amendments would you propose to the draft legislation and on what basis?

Interest payable where relief is withdrawn

3.6 The Scottish Government intends to amend the Revenue Scotland and Tax Powers Act (Interest on Unpaid Tax and Interest Rates in General) Regulations 2015 to provide that, where relief is withdrawn, interest will be payable against any

resulting tax liability. Interest will be treated as accruing from the 'relevant date', that being the date of the first return made under section 27 of the LBTT Act.

3.7 Relevant provisions are set out at article 3 of the draft Order set out in Annex A. The draft provisions amend regulation 3 to include withdrawal of relief under new schedule 16D as a 'disqualifying event' and amend regulation 4 to include reference to new schedule 16D.

Questions

22. Do you agree that the provisions as drafted achieve the policy intent of requiring interest to be paid where relief is withdrawn?

23. If not, what amendments would you propose to the draft legislation and on what basis?

4. Withdrawal of Relief

4.1 In certain circumstances, where qualifying conditions cease to be met after the effective date of the transaction and within the control period, relief may be withdrawn and the relevant amounts repaid to Revenue Scotland. Withdrawal provisions similarly apply to other LBTT reliefs, for example, group relief and reconstruction relief.

4.2 The Scottish Government intends for relief to be withdrawn where qualifying Green Freeport land, which was the subject of a qualifying transaction, and for which relief was claimed, ceases to be used in a qualifying manner. This is to ensure that the arrangements for the relief help to promote long-term investment in underdeveloped tax sites with economic potential, in line with the policy aims and the wider Green Freeport programme objectives.

4.3 For example:

- a. On 1 May 2025, Company A purchases land within a tax site which it intends to use in a qualifying manner. 100% relief is claimed.
- b. On 1 August 2025, Company A revises their plans and begins developing the land for residential use.
- c. Relief is therefore withdrawn.

4.4 For clarity, the Scottish Government does not intend to withdraw relief where:

- a. Land ceases to be used in a qualifying manner due to circumstances that are unforeseen and beyond the buyer's control;
- b. Land is intended to be used in a qualifying manner and reasonable steps are being taken to ensure that the land is used in that manner; or
- c. Land ceases to be used in a qualifying manner outwith the control period.

4.5 For example:

- a. On 1 May 2025, Company B purchases a warehouse within a tax site which will be used in a qualifying manner. 100% relief can be claimed.
- b. On 1 May 2027, the warehouse is irreparably damaged by a fire and is subsequently demolished.
- c. The land remains vacant until it is sold by Company B on 1 August 2028.

4.6 In this scenario, the land ceased to be used in a qualifying manner within the control period and was sold outwith the control period.

4.7 As the land ceased to be used in a qualifying manner for reasons outside of Company A's control, relief is not withdrawn.

4.8 Relevant provisions are set out at paragraph 8 of schedule 16D, set out in Annex A. The draft provisions set out those circumstances where relief may be withdrawn, and those circumstances where relief is not withdrawn.

Questions

24. Do you agree that the provisions as drafted achieve the policy intent of providing for withdrawal of relief where land ceases to be used in a qualifying manner?
25. If not, what amendments would you propose to the draft legislation and on what basis?

Control Period

4.9 For the purposes of considering whether relief should be withdrawn, a 'control period' will apply. During the control period, relief claimants must demonstrate that they continue to meet the conditions for relief.

4.10 This use of a control period assists the Scottish Government in ensuring that broader programme objectives continue to be met, post-investment.

4.11 The control period will be the shorter of:

- Three years beginning with the effective date of the transaction; or,
- The period beginning with the effective date of the transaction and ending with the date the buyer, or person connected to the buyer, ceases to hold a chargeable interest in the qualifying Green Freeport land.

4.12 Depending on the effective date of the transaction, the control period may end after the 5-year period in which relief is available.

4.13 If land ceases to be used in a qualifying manner outwith the control period, the relief will not be withdrawn as long as it was used for a qualifying manner throughout the duration of the control period relevant to the transaction. This helps to ensure that the relief is properly targeted.

4.14 Relevant provisions are set out at paragraph 9 of schedule 16D, set out in Annex A. The provisions define the 'control period', including the definition of a 'final transaction', that being a transaction where, immediately after the effective date of the transaction, neither the buyer, nor person connected with the buyers, holds a chargeable interest in the qualifying Green Freeport land.

Questions

26. Do you agree that the provisions as drafted reflect the intended definition of a 'control period'?
27. If not, what amendments would you propose to the draft legislation and on what basis?

Part-disposal of an interest in qualifying Green Freeport land within the control period

4.15 Where part of an interest in qualifying land is disposed of during the control period, the Scottish Government's intent is that relief attributable to the tax liability on the proportion of land that has not been disposed of should not be withdrawn provided the remaining land continues to meet all relevant conditions.

4.16 The retained interest will continue to be subject to the control period and withdrawal provisions.

4.17 Should the retained interest cease to be used in a qualifying manner within the control period, the entire relief claimed in the original return will be withdrawn.

4.18 Relevant provisions are set out at paragraph 10 of schedule 16D as set out at article 2(5) of the draft Order attached at Annex A.

Questions

28. Do you agree that the provisions as drafted achieve reflect the policy intent of how part disposals are treated?

29. If not, what amendments would you propose to the draft legislation and on what basis?

Lease assignments outwith the relief period

4.19 Where a lease, against which relief has been claimed, is assigned **after** the date relief ceases to be available, the Scottish Government's intent is to treat that assignment as the grant of a new lease. This will bring the new lease into scope of schedule 19 of the LBTT Act.

4.20 Relevant provisions are set out at article 2(6) of the draft Order set out in Annex A. The provisions will amend paragraph 27(3) of schedule 19 of the LBTT Act to make reference to new schedule 16D.

Questions

30. Do you agree that the provisions as drafted work as intended to treat the assignment of a lease, against which relief has been claimed, as the grant of a lease?

31. If not, what amendments would you propose to the draft legislation and on what basis?

32. Are there other aspects of lease transactions which the Scottish Government should give further consideration to in providing for this relief?

5. Equality Impacts

Equal opportunities

5.1 The Scottish Government assessed the potential impacts of the LBTT Act on equal opportunities. The proposed amendments, made under powers conferred by the Act, do not discriminate with respect to any of the protected characteristics (including age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) either directly or indirectly.

Human rights

5.2 The proposed amendments do not infringe on or affect any subject areas of the European Convention on Human Rights (ECHR). No differential impact on human rights or any impact on any individual's civil liberties through the proposals have been identified.

Business impacts

5.3 Responses to this consultation will help to inform whether a Business and Regulatory Impact Assessment (BRIA) is required. If a BRIA is required, it will be published alongside the Order introduced to Parliament post-consultation.

Privacy impacts

5.4 The proposed amendments would be subject to other legislation that prohibits, restricts access or relates to the disclosure of that information, for example the Data Protection Act 2018 or the Revenue Scotland and Tax Powers Act 2014.

Island communities

5.5 The proposed amendments would have no identified differential impact on island and rural communities.

Local government

5.6 There are no identified additional responsibilities or costs to local authorities.

Sustainable development

5.7 The proposals will have no impact on sustainable development.

Questions

33. Do you think that the proposed amendments will in any way impact upon equal opportunities, human rights, businesses, island communities, privacy and/or sustainable development in Scotland?

34. If so, please give us your views.

6. How to Respond to this Consultation

Responding to the Consultation

We are inviting responses to this consultation by 12 May 2023.

Please respond to this consultation using the Scottish Government's consultation hub, Citizen Space at <http://consult.gov.scot>.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form to:

Fully Devolved Taxes Unit
Directorate of Taxation and Fiscal Sustainability
Scottish Government
Victoria Quay
Edinburgh
EH6 6QQ

Responses may also be sent to Devolvedtaxes@gov.scot.

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our privacy policy: <https://www.gov.scot/privacy/>.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.gov.scot>. If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Feedback

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at devolvedtaxes@gov.scot.

Scottish Government Consultation Process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.gov.scot>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision-making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

7 Annex A – Draft Legislative Provisions

Draft Order laid before the Scottish Parliament under section 27(3)(a) and 68(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

No.

LAND AND BUILDINGS TRANSACTION TAX

The Land and Buildings Transaction Tax (Green Freeports Relief) (Scotland) Order 2023

Made - - - -

Coming into force - -

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 27(3)(a) and 68(1) of the Land and Buildings Transaction Tax (Scotland) Act 2013 and all other powers enabling them to do so.

In accordance with section 68(2)(c) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

j001 Citation, commencement and interpretation

1.—(1) This Order may be cited as the Land and Buildings Transaction Tax (Green Freeports Relief) (Scotland) Order 2023 and comes into force on [2023].

(2) In this Order, “the Act” means the Land and Buildings Transaction Tax (Scotland) Act 2013.

j002 Green freeports relief

2.—(1) The Act is amended as follows.

(2) In section 27(1) (reliefs), after “schedule 16C (lighthouses relief)”, insert—

“schedule 16D (green freeports relief).”.

(3) In section 33 (further return where relief withdrawn)—

(a) the word “or” at the end of subsection (1)(e) is repealed,

(b) after subsection (1)(f) insert “or,

(g) Part 4 of schedule 16D (green freeports relief).”.

(c) after subsection (4)(f) insert—

“(g) in relation to the withdrawal of relief under schedule 16D, an event mentioned in paragraph 8(1) of that schedule.”.

- (4) In section 58 (connected persons), after paragraph (ha) insert—
 “(hb) schedule 16D.”.
- (5) After schedule 16C, insert—

“SCHEDULE 16D
(introduced by section 27)

GREEN FREEPORTS RELIEF

PART 1

INTRODUCTORY

Overview

- 1 (1) This schedule provides for relief in the case of transactions relating to land in a green freeport tax site.
- (2) It is arranged as follows—
- Part 2 makes provision about the circumstances in which relief is available,
 - Part 3 defines key terms,
 - Part 4 makes provision about withdrawal of the relief,
 - Part 5 makes provision about cases involving alternative finance arrangements.

PART 2

THE RELIEF

Full relief

- 2 (1) This paragraph applies to a land transaction if—
- (a) at least 90% of the chargeable consideration for the transaction is attributable to qualifying green freeport land, and
 - (b) the effective date of the transaction is within the period beginning on 1 July 2023 and ending on 30 June 2028.
- (2) The transaction is exempt from charge.

Partial relief

- 3 (1) This paragraph applies to a land transaction if—
- (a) the proportion of the chargeable consideration for the transaction that is attributable to qualifying green freeport land (“the relevant proportion”) is less than 90% but at least 10%, and
 - (b) the effective date of the transaction is within the period beginning on 1 July 2023 and ending on 30 June 2028.
- (2) The tax chargeable in respect of the transaction is reduced by the relevant proportion.

Attributing chargeable consideration to land

- 4 (1) For the purposes of this schedule, the chargeable consideration for a land transaction that is attributable to qualifying green freeport land must be determined on a just and reasonable basis.
- (2) Sub-paragraphs (3) and (4) apply if less than 100% of the chargeable consideration attributable to transaction land situated in a green freeport tax site (the “freeport consideration”) is attributable to land that satisfies the condition in paragraph 6(1)(b).
- (3) If at least 90% of the freeport consideration is attributable to land that satisfies the condition in paragraph 6(1)(b) then, for the purposes of this schedule, all of the freeport consideration is to be treated as being attributable to qualifying green freeport land.
- (4) If less than 10% of the freeport consideration is attributable to land that satisfies the condition in paragraph 6(1)(b) then, for the purposes of this schedule, none of the freeport consideration is to be treated as being attributable to qualifying green freeport land.

PART 3

KEY TERMS

Transaction land

- 5 In this schedule, “transaction land”, in relation to a land transaction, means land a chargeable interest in which is the subject matter of the transaction.

Qualifying green freeport land

- 6 (1) For the purposes of this schedule, transaction land is “qualifying green freeport land” to the extent that, on the effective date of the transaction—
- (a) it is situated in a green freeport tax site, and
- (b) the buyer intends it to be used exclusively in a qualifying manner.
- (2) In this schedule, “green freeport tax site” means an area in Scotland which has been designated as a freeport tax site under section 113 of the Finance Act 2021 (designation of freeport tax sites).

Use of land in a qualifying manner

- 7 (1) For the purposes of this schedule, transaction land is used in a qualifying manner if it used in one or more of the following ways—
- (a) it is used by the buyer or a connected person in the course of a commercial trade or profession,
- (b) it is developed or redeveloped by the buyer or a connected person for use (by any person) in the course of a commercial trade or profession,
- (c) it is exploited by the buyer or a connected person, in the course of a commercial trade or profession, as a source of rents or other receipts (other than excluded rents).

- (2) But land is not used in a qualifying manner to the extent that it is—
 - (a) used as a dwelling or as the garden or grounds of a dwelling,
 - (b) developed or redeveloped to become residential property,
 - (c) exploited as source of rents or other receipts payable by a person using the land as a dwelling or as the garden or grounds of a dwelling, or
 - (d) held (as stock of the business) for resale without development or redevelopment.
- (3) For the purposes of this paragraph, use of land in the course of a commercial trade or profession includes use of land for a purpose that is ancillary to the use of other land which—
 - (a) is situated in a green freeport tax site, and
 - (b) is being used, or developed or redeveloped, in the course of a commercial trade or profession.
- (4) The references in this paragraph to doing something in the course of a commercial trade or profession include doing something in the course of a property rental business.
- (5) In this paragraph—

“commercial”, in relation to a trade or profession, means carried on—

 - (a) on a commercial basis, and
 - (b) with a view to profit,

“excluded rents” means rents within any of classes 2 to 6 in the table in section 605(2) of the Corporation Tax Act 2010,

“property rental business” means a property business as defined in Chapter 2 of Part 3 of the Income Tax (Trading and Other Income) Act 2005.

PART 4

WITHDRAWAL OF RELIEF

Withdrawal of relief

- 8 (1) The relief is withdrawn if, at any time during the control period, the qualifying green freeport land is not used exclusively in a qualifying manner.
- (2) But the relief is not withdrawn where, because of a change in circumstances that is unforeseen and beyond the buyer’s control, it is not reasonable to expect the qualifying green freeport land to be used exclusively in a qualifying manner at that time.
- (3) Where, at a time during the control period, the use of all or part of the qualifying green freeport land in a qualifying manner has not yet begun, that land (or that part of the land) is to be treated as being used exclusively in a qualifying manner if reasonable steps are being taken to ensure that it is used in that manner.
- (4) Where, at a time during the control period, the use of all or part of the qualifying green freeport land in a qualifying manner has ceased, that land (or that part of

the land) is to be treated as being used exclusively in a qualifying manner if reasonable steps are being taken—

- (a) to ensure that it is used in that manner, or
 - (b) to dispose of all chargeable interests in that land (or that part of the land) that are held by the buyer and connected persons in a timely manner.
- (5) Where the 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.

The control period

- 9 (1) In this schedule, the “control period”, in relation to a land transaction, means the shorter of—
- (a) the period of three years beginning with the effective date of that transaction, and
 - (b) the period beginning with the effective date of that transaction and ending with the effective date of the final transaction.
- (2) For the purposes of this paragraph, a land transaction is the “final transaction” if, immediately after the effective date of the transaction, neither the buyer nor a connected person holds a chargeable interest in the qualifying green freeport land (whether as a result of that transaction alone or as a result of that transaction and other land transactions).

Disposal of interest in part of qualifying green freeport land during control period

- 10 (1) This paragraph applies where the buyer ceases to hold a chargeable interest in part of the qualifying green freeport land during the control period.
- (2) The references in paragraphs 8 and 9 to the qualifying green freeport land are to be treated as references only to the part of the qualifying green freeport land in relation to which the buyer still holds a chargeable interest (whether the chargeable interest acquired in the land transaction in respect of which relief was allowed under Part 2 of this schedule or another chargeable interest).

PART 5

ALTERNATIVE FINANCE ARRANGEMENTS

Cases involving alternative finance arrangements

- 11 (1) This paragraph applies where schedule 7 applies.
- (2) This paragraph applies for the purposes of determining—
- (a) whether relief is available under Part 2 of this schedule for the first transaction,
 - (b) whether relief allowed for the first transaction is withdrawn under Part 4 of this schedule.
- (3) For those purposes this schedule has effect as if—
- (a) references to the buyer were references to the relevant person,

- (b) the reference in paragraph 7(2)(d) to land held (as stock of the business) for resale without development or redevelopment were a reference to land held in that manner by the relevant person.
- (4) The first transaction does not qualify for relief under Part 2 of this schedule except where it does so by virtue of this paragraph.
- (5) In this paragraph—
 - “the first transaction” has the same meaning as in schedule 7,
 - “the relevant person” means the person, other than the financial institution, who entered into the arrangements mentioned in schedule 7.”
- (6) In schedule 19, in paragraph 27(3) (cases where assignation of lease treated as grant of lease), after sub-paragraph (f) insert—
 - “(g) schedule 16D (green freeports relief).”

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Interest where relief is withdrawn

3.—(1) The Revenue Scotland and Tax Powers Act (Interest on Unpaid Tax and Interest Rates in General) Regulations 2015 (S.S.I. 2015/128) are amended as follows.

(2) In regulation 3—

- (a) the word “or” at the end of paragraph (f) is revoked,
- (b) at the end of paragraph (g), for “and” substitute “or”,
- (c) after paragraph (g) insert—

“(h) in relation to the withdrawal of relief under schedule 16D of the LBTT(S) Act 2013, an event mentioned in paragraph 8(1) of that schedule; and”.

(3) In regulation 4, in the Column headed ‘*Relevant date*’ corresponding with Land and buildings transaction tax—

- (a) the word “or” at the end of paragraph (vi) is revoked,
- (b) at the end of paragraph (vii), insert “, or

(viii) Part 4 of schedule 16D (green freeports relief) of the LBTT(S) Act 2013.”.



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