

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(3) In section 33 (further return where relief withdrawn)—

(a) the word “or” at the end of subsection (1)(e) is repealed,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