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**Guidance on the SDLT pre-completion transactions rules**

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Guidance  
July 2013

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## Chapter 1 Introduction

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- 1.1 This document contains guidance for the Stamp Duty Land Tax (SDLT) rules for pre-completion transactions. These rules are in Schedule 2A of the Finance Act 2003. The new rules replaced the old regime for transfers of rights. They are effective for pre-completion transactions entered into on or after the day on which the Finance Act 2013 was passed.
- 1.2 This guidance will ultimately be incorporated into the SDLT Manual available on the HM Revenue & Customs (HMRC) website.
- 1.3 Chapter 2 contains general guidance as to how the new rules work. Chapter 3 contains examples of how the rules apply to various scenarios. Unless otherwise specified, all statutory references are to the Finance Act 2003.

## Chapter 2      General guidance

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### Pre-completion transactions

- 2.1 From the day on which the Finance Act 2013 was passed, section 45 as it applied before that date to transfers of rights was replaced by new provisions for pre-completion transactions.
- 2.2 The starting point for a pre-completion transaction is that there must be a contract for a land transaction within section 44: a contract that is to be completed by a conveyance. Before that ‘original contract’ is substantially performed or completed, the purchaser under that contract may enter into a further agreement as a result of which another person is entitled to call for the conveyance of all or part of the subject-matter of the original contract. Such an agreement is a pre-completion transaction.
- 2.3 In the context of a pre-completion transaction, the purchaser under the original contract is sometimes called ‘the transferor’ and the ultimate purchaser ‘the transferee’.

### Outline of legislation

- 2.4 Section 45 introduces Schedule 2A which contains provisions about pre-completion transactions. Unless otherwise specified, references to paragraphs in this guidance are to paragraphs of Schedule 2A. The Schedule can be broken down into the following different areas.

Paragraphs 1-3	Introductory provisions and key definitions
Paragraphs 4-8	Assignments of rights
Paragraphs 9-11	Free-standing transfers
Paragraphs 12-14	Minimum consideration rule
Paragraphs 15-18	Relief for the transferor
Paragraph 19	Power to make regulations
Paragraphs 20-21	Additional definitions and interpretation

- 2.5 **Paragraphs 1-3 – Introductory provisions and key definitions:** These paragraphs define a pre-completion transaction and make a distinction between assignments of rights and other pre-completion transactions (known as free-standing transfers). They also state that the transferee is not regarded as entering into a land transaction by reason of the pre-completion transaction.
- 2.6 **Paragraphs 4-8 – Assignments of rights:** Paragraph 4 outlines how the transferee is treated in these cases. Broadly speaking, the consideration for the transferee’s acquisition is whatever the transferee gives under the original contract plus whatever the transferee gives for the assignment of rights.
- 2.7 The vendor for the transferee’s acquisition is generally the original vendor under the original contract, although there are exceptions to his general rule (see paragraph 8).
- 2.8 Paragraph 5 creates a ‘notional land transaction’ for the transferor under an assignment of rights (sub-paragraph (1)). If there are successive assignments, then there is also a notional ‘additional land transaction’ for each additional subsequent transferor in the chain (sub-paragraph (2)). Broadly speaking, the consideration for a notional land transaction is any consideration given under the original contract by either the transferee or the transferor. For an additional land transaction, any consideration given by the purchaser under the additional land transaction for the preceding assignment is also brought into charge.
- 2.9 Where the original contract is substantially performed but subsequently rescinded or annulled, the transferee’s position will be covered by the normal rules in section 44(9). Similar provision is made in paragraph 6 for a notional or additional land transaction within paragraph 5.
- 2.10 An assignment of rights may relate to only part of the land that is the subject-matter of the original contract. In such a case, paragraphs 4 and 5 apply as if the original contract were split into two contracts: one for the land that is subject to the assignment and one for the rest of the land (paragraph 7).
- 2.11 **Paragraphs 9-11 – Free-standing transfers:** Paragraph 9 concerns the transferee. It adds any consideration given for the pre-completion transaction to the consideration otherwise given by the transferee. As for assignments of rights, the vendor for the transferee’s acquisition is

generally the original vendor, subject to certain exceptions (see paragraph 10).

- 2.12 No special provision is made for the transferor. If the free-standing transfer is a subsale, then the original contract will be completed (or substantially performed) so the transferor will be the purchaser under a land transaction as normal under section 44. If the free-standing transfer is a novation, then there is no land transaction under which the transferor is the purchaser, so the transferor has no need to file a return or claim relief.
- 2.13 **Paragraphs 12-14 – Minimum consideration rule:** The minimum consideration rule only applies where the ultimate purchaser is either connected with, or not acting at arm's length from, the transferor (or any other preceding transferor where there are successive pre-completion transactions). It can be ignored for all other (most) transactions.
- 2.14 Where the rule applies, it can increase the consideration for the ultimate purchaser's acquisition. If either of two 'minimum amounts' is higher than the amount of consideration given by the normal rules, then the consideration is increased to the higher minimum amount.
- 2.15 The first minimum amount is generally the amount due under original contract. The second minimum amount is given by a formula which includes the net amount given by each party (subject to certain exceptions) to the transactions.
- 2.16 **Paragraphs 15-18 – Relief for the transferor:** The transferor can claim full relief for its land transaction in certain circumstances. For relief to be available, the pre-completion transaction must be an assignment of rights or a subsale. There are separate reliefs for assignments (paragraph 15) and for subsales (paragraph 16). For a subsale, the original contract must be substantially performed or completed at the same time as and in connection with the substantial performance or completion of the subsale contract. Partial relief is available where the assignment or subsale relates to only part of the land that is the subject of the original contract. Relief must be claimed in a land transaction return, or an amendment to such a return. The time limit for amending a land transaction return is twelve months from the filing date for the return (paragraph 6 of Schedule 10). Relief code 34 should be entered in the appropriate box of the land transaction return.

- 2.17 Relief is barred where it is reasonable to conclude that the transferor had a main purpose of securing a tax advantage for any person. In the definition of tax advantage, ‘tax’ refers only to SDLT and not other taxes.

### Registration of interest in land

- 2.18 Section 79 prevents the registration of land acquired in most notifiable land transactions unless the person applying to have their interest registered produces a certificate (in practice the SDLT5) showing they have met their SDLT obligations.
- 2.19 In a subsale, there will generally be two transfers of the land: A to B and B to C.
- 2.20 If B wishes to register its interest in the land, it will need to produce an SDLT5 together with its application for registration and the transfer from A to B, in the normal way.
- 2.21 If B does not wish to register its interest in the land, C will need to produce C’s SDLT5, its application for registration and the transfers from A to B and B to C. With its application for registration, C should also either:
- (i) confirm in writing that B acquired the land from A and transferred it to C in pursuance of a ‘free-standing transfer’ for the purposes of Schedule 2A to the Finance Act 2003, or
  - (ii) produce written confirmation from B (or B’s agent) that B acquired the land from A and transferred it to C in pursuance of a ‘free-standing transfer’ for the purposes of Schedule 2A to the Finance Act 2003.
- 2.22 If there is only one transfer of the land – A to C – then C will only need to produce its SDLT5, its application for registration and the transfer from A to C.
- 2.23 In an assignment of rights, there will be just one transfer of the land: A to C. In this case, C can register its interest in the normal way. Although the notional land transaction between A and B is notifiable for SDLT purposes, section 79 does not apply to the notional transaction. There is no need for a letter confirming an assignment of rights. Only C’s SDLT5 is needed.

## Chapter 3 Examples

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### Example 1 Simple assignments of rights

Ex 1.1 This is an example of how the rules apply to an assignment of rights.

- A enters into a sale and purchase agreement with B for some land with a consideration of £1 million payable on completion.
- B assigns its rights under the contract to C for a payment of £100,000.
- C completes the acquisition and pays A £1 million.

Ex 1.2 The intended outcome is that B should have to make a land transaction return for a transaction with consideration of £1 million but can include a claim for full relief. C should have to make a land transaction return with consideration of £1.1 million.

Ex 1.3 The transactions fall within Schedule 2A in the following way:

- The transactions fall within the definition of a pre-completion transaction in paragraphs 1(1) and (2).
- The pre-completion transaction is an ‘assignment of rights’ that falls within paragraph 2(1).



- Under paragraph 1(1), 1(2) and 2(3): the original contract is the contract between A and B, the original purchaser is B, the transferee is C and the transferor is B.
- The transferee is not regarded as entering into a land transaction by reason of the pre-completion transaction (paragraph 3).

Ex 1.4 The position of the transferee, C, is covered mainly by paragraph 4.

- C is the purchaser under a land transaction under section 44(3) (paragraph 4(4)). Paragraph 4(2) provides that this is not prevented by the words ‘between the same parties’ in section 44(10).
- Since paragraph 4(3)(a) is satisfied, paragraph 4(5) applies. Paragraph 4(5), read with paragraph 4(9), determines how paragraph 1 of Schedule 4 should be read to determine the chargeable consideration for C’s acquisition. The result is that both the £1 million given to A and the £100,000 given to B are included – total £1.1 million.
- Under paragraph 8(3) the vendor for C’s acquisition is A; the land transaction return should be completed accordingly.

Ex 1.5 The position of the transferor, B, is covered mainly by paragraph 5, with relief available under paragraph 15.

- The transactions fall within paragraph 5(1). Under that subparagraph, B is deemed to be the purchaser under a notional land transaction with the same effective date as C’s land transaction.
- The chargeable consideration for the notional land transaction is dealt with in paragraph 5(3): it is the total of amount A and amount B. Amount A is £1 million as that is the consideration given by C to A under the original contract (paragraph 5(5) ‘amount A’ (a)). Amount B is nil, so the chargeable consideration is £1 million.

- The transactions fall within paragraph 15 so B can claim full relief from tax (subject to the conditions outlined in paragraphs 15 and 18) under sub-paragraph (4).

## Example 2 Subsale and minimum consideration rule

Ex 2.1 This is an example of a subsale. It also illustrates how the minimum consideration rule works where parties are connected.

- A enters into a sale and purchase agreement with B for some land with a consideration of £1 million payable on completion.
- B enters into a sale and purchase agreement for the same land with C for consideration of £900,000 payable on completion.
- At a single completion meeting the sales from A to B and from B to C complete; consideration of £900,000 is paid by C to B and consideration of £1 million is paid by B to A.

Ex 2.2 **If B and C are unconnected and acting at arm's length**, then the intended outcome is that B should have to make a land transaction return for a transaction with consideration of £1 million but can include a claim for full relief. C should have to make a land transaction return with consideration of £900,000.

Ex 2.3 The transactions fall within the new legislation in the following way.

- The transactions fall within the definition of a pre-completion transaction that is a free-standing transfer (paragraph 1(1)-(2) and paragraph 2(2)).
- Under paragraph 1(1), 1(2) and 2(3): the original contract is the contract between A and B, the original purchaser is B, the transferee is C and the transferor is B.
- The transferee is not regarded as entering into a land transaction by reason of the pre-completion transaction (paragraph 3).

Ex 2.4 The pre-completion transaction is not an assignment of rights so paragraph 9 applies.

- Ex 2.5 In the absence of any special provision, B is regarded as entering into a land transaction with A for consideration of £1 million (section 44(3)).
- Ex 2.6 The pre-completion transaction is a qualifying subsale under paragraph 16 and falls within the conditions set out in paragraph 16(1). So B can claim relief under sub-paragraph (6) (subject to the rest of the conditions set out in paragraph 16 and paragraph 18).
- Ex 2.7 C's acquisition from B falls with section 44(3). The consideration is taken to include the consideration given for the free-standing transfer (paragraph 9(2)), although that is nil in this case. So the consideration is just the £900,000 paid by C to B in the normal way.
- Ex 2.8 The vendor for C's acquisition is A (paragraph 10(4)); the land transaction return should be completed accordingly.
- Ex 2.9 **If B and C were connected**, then C's acquisition would be subject to the minimum consideration rule – paragraphs 12-14 – with the intended outcome that the chargeable consideration should be increased from £900,000 to £1 million.
- The consideration for C's acquisition is taken to be the greatest of three amounts: either the £900,000 already determined above or the first minimum amount or the second minimum amount (paragraph 12(2)).
  - The first minimum amount is defined in paragraph 13(1) (subject to paragraph 13(2)). In this case it is the £1 million that was due under the contract between A and B.
  - The second minimum amount is set out in paragraph 14 and is the total of the net amounts of consideration (as determined in sub-paragraph (2)) given by the relevant parties (as per sub-paragraph (3) subject to sub-paragraph (4)). In this case, B and C are the relevant parties. The net amount of consideration given by C is £900,000. The net amount of consideration given by B is £100,000 (that is, the £1 million given to A less the £900,000 received from C). So the total of the net amounts of consideration is £1 million.

- The result is that the consideration for C's acquisition is £1 million – the greatest amount out of £900,000, £1 million and £1 million.
- The vendor for C's acquisition is A (paragraph 10(4)); the land transaction return should be completed accordingly.

### Example 3 Assignment of part

Ex 3.1 This is an example of how the rules apply to an assignment of rights relating to only part of the land under the original contract.

- A enters into a sale and purchase agreement with B for some land with a consideration of £1 million payable on completion. The land consists of Plot 1 (value: £600,000) and Plot 2 (value £400,000).
- B assigns its rights to Plot 2 under the contract to C.
- C completes the acquisition of Plot 2 and pays A £400,000.
- B completes the acquisition of Plot 1 and pays A £600,000.

Ex 3.2 The intended outcome is that B should have to make a land transaction return for a transaction with consideration of £400,000 in respect of Plot 2 but can include a claim for full relief. C should have to make a land transaction return with consideration of £400,000. B should also have to make a land transaction return for a transaction with consideration of £600,000 in respect of Plot 1.

Ex 3.3 The transactions fall within Schedule 2A in the following way:

- The transactions fall within the definition of a pre-completion transaction in paragraphs 1(1) and (2).
- The pre-completion transaction is an 'assignment of rights' that falls within paragraph 2(1).
- Under paragraph 1(1), 1(2) and 2(3): the original contract is the contract between A and B, the original purchaser is B, the transferee is C and the transferor is B.

- The transferee is not regarded as entering into a land transaction by reason of the pre-completion transaction (paragraph 3).
- Paragraphs 4 and 5 are to be read as if there were a separate original contract for Plot 2 (paragraph 7).

Ex 3.4 The position of the transferee, C, is covered mainly by paragraph 4, on the basis that there was a 'separate contract' for Plot 2 (paragraph 7).

- C is the purchaser under a land transaction under section 44(3) (paragraph 4(4)). Paragraph 4(2) provides that this is not prevented by the words 'between the same parties' in section 44(10).
- Since paragraph 4(3)(a) is satisfied, paragraph 4(5) applies. Paragraph 4(5), read with paragraph 4(9), determines how paragraph 1 of Schedule 4 should be read to determine the chargeable consideration for C's acquisition. There was no consideration given for the assignment of rights. The £600,000 given by B on completion of the acquisition of Plot 1 is regarded as given under a different contract. So the result is that just the £400,000 given by C on completion is the chargeable consideration.

Ex 3.5 The position of the transferor, B, is covered mainly by paragraph 5. Again this must be read on the basis that there was a 'separate contract' for Plot 2 (paragraph 7). Relief is available under paragraph 15.

- The transactions fall within paragraph 5(1). Under that subparagraph, B is deemed to be the purchaser under a notional land transaction with the same effective date as C's land transaction.
- The consideration for B's acquisition is dealt with in paragraph 5(3). That consideration is £400,000 as that is the consideration given by C to A in respect of the subject matter of the original contract (see point (a) regarding amount 'A' under paragraph 5(5)).

- Ex 3.6 The transactions fall within paragraph 15 so B can claim full relief under sub-paragraph (4) against the tax due under the notional land transaction.
- Ex 3.7 This leaves the acquisition of Plot 1 by B. This transaction remains within the scope of section 44. There is a land transaction under section 44(3) and the chargeable consideration is the £600,000 B gives to acquire Plot 1.
- Ex 3.8 In this example, it is clear how much of the consideration under the original contract relates to Plot 1 and how much to Plot 2. More generally, the consideration under the original contract would need to be apportioned on a just and reasonable basis as required under paragraph 4 of Schedule 4.
- Ex 3.9 If the subject-matter of the original contract is a freehold interest then an assignment of rights (or subsale) involving the grant of a lease out of that freehold cannot be a pre-completion transaction since the lease is not the whole or part of the subject-matter of the original contract (paragraph 1(2)(a) and (7)). Similarly if the subject-matter of the original contract is a head-lease and the assignment (or subsale) involves the grant of a sub-lease.

#### Example 4 Subsale of part

- Ex 4.1 This is an example of how the rules apply to a subsale relating to only part of the land under the original contract.
- A enters into a sale and purchase agreement with B for some land with a consideration of £1 million payable on completion. The land consists of Plot 1 (value: £600,000) and Plot 2 (value £400,000).
  - B enters into a subsale agreement to sell Plot 2 to C for £400,000.
  - At a single completion meeting the sales from A to B and from B to C complete; consideration of £400,000 is paid by C to B and consideration of £1 million is paid by B to A.
- Ex 4.2 The intended outcome is that B should have to make a land transaction return for a transaction with consideration, on first principles, of £1 million but can include a claim for partial relief

reducing the consideration to £600,000. C should have to make a land transaction return with consideration of £400,000.

- Ex 4.3 The transactions fall within Schedule 2A in the following way:
- The transactions fall within the definition of a pre-completion transaction in paragraphs 1(1) and (2).
  - The pre-completion transaction is a ‘free-standing transfer’ within paragraph 2(2).
  - Under paragraph 1(1), 1(2) and 2(3): the original contract is the contract between A and B, the original purchaser is B, the transferee is C and the transferor is B.
- Ex 4.4 The transferee is not regarded as entering into a land transaction by reason of the pre-completion transaction (paragraph 3).
- Ex 4.5 The pre-completion transaction is not an assignment of rights so paragraph 9 applies.
- Ex 4.6 C’s acquisition from B falls with section 44(3). The consideration is taken to include the consideration given for the free-standing transfer (paragraph 9(2)), although that is nil in this case. So the consideration is just the £400,000 paid by C to B in the normal way.
- Ex 4.7 In the absence of any special provision, B is regarded as entering into a land transaction with A for consideration of £1 million (section 44(3)).
- Ex 4.8 The pre-completion transaction is a qualifying subsale under paragraph 16 and falls within the conditions set out in paragraph 16(1). So B can claim relief under sub-paragraph (6) (subject to the rest of the conditions set out in paragraph 16 and paragraph 18). Since the subsale relates to only part of the subject-matter of the original contract, B cannot claim full relief under sub-paragraph (2). Instead, the consideration for the transaction is reduced under sub-paragraph (3). The reduction is the amount of the £1 million consideration referable to Plot 2. In this case that is £400,000 so the consideration is reduced to £600,000.

## Example 5 Series of assignments

- Ex 5.1 This example covers a number of slightly different scenarios involving a series of assignments of rights. **In the first scenario**, the final transferee pays an additional amount of consideration.
- Ex 5.1.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1 million. B pays A a deposit of £100,000.
- Ex 5.1.2 B assigns its rights to C for £100,000 and C assigns its rights to D for £150,000.
- Ex 5.1.3 D pays A £900,000 on completion.
- Ex 5.1.4 Similarly to C in Example 1, D is chargeable under paragraph 4 as the transferee. The chargeable consideration is £900,000 plus £150,000 totalling £1,050,000.
- Ex 5.1.5 Paragraph 5 applies in the following way. The acquisition by D is ‘the transferee’s land transaction’ (paragraph 5(1)(a)). The assignment from C to D is ‘the implemented assignment of rights’ (paragraph 5(2)). B is the purchaser under a notional land transaction (paragraph 5(1)). C is the purchaser under an additional land transaction (paragraph 5(2)).
- Ex 5.1.6 The chargeable consideration for B’s transaction – the notional land transaction – is given by paragraph 5(3). It is the £100,000 paid by B to A (amount ‘B’ in paragraph 5(5)) plus the £900,000 paid by D to A on completion (amount ‘A’ in paragraph 5(5)(b)) totalling £1 million. B can claim relief.
- Ex 5.1.7 The chargeable consideration for C’s transaction – an additional land transaction – is given by paragraph 5(4). It is the £100,000 paid by C to B (amount ‘C’ in paragraph 5(5) – in calculating amount C, ‘the preceding assignment of rights’ was the assignment from B to C (paragraph 5(6)) plus the £900,000 paid by D to A on completion (point (b) under amount ‘A’ in paragraph 5(5)) totalling £1 million. C can claim relief.
- Ex 5.2 **In the second scenario**, D pays less.



- Ex 5.2.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1 million. B pays A a deposit of £100,000.
- Ex 5.2.2 B assigns its rights to C for £100,000 and C assigns its rights to D for £50,000.
- Ex 5.2.3 D pays A £900,000 on completion.
- Ex 5.2.4 D is chargeable under paragraph 4 as the transferee. The chargeable consideration is £900,000 plus £50,000 totalling £950,000.
- Ex 5.2.5 The position of B and C is the same as in the previous scenario.
- Ex 5.3 **In the final scenario**, there is a series of assignments of rights where D is connected with C. In this example, C gets a good deal from B in an entirely commercial transaction.
- Ex 5.3.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1 million. B pays A a deposit of £100,000.
- Ex 5.3.2 B assigns its rights to C for £50,000 and C assigns its rights to D for nil. C and D are connected.
- Ex 5.3.3 D pays A £900,000 on completion.
- Ex 5.3.4 D is chargeable under paragraph 4 as the transferee. The chargeable consideration is £900,000 plus nil totalling £900,000. But the minimum consideration rule applies (paragraph 12(2)). Both the first and second minimum amounts are £950,000 (see below) so D is chargeable on £950,000.
- Ex 5.3.5 The position of B and C is similar to the earlier examples.
- Ex 5.3.6 The first minimum amount is given by paragraph 13(2). C is ‘T’ (‘Condition B’ in paragraph 13(3)) and C is also ‘the first T’ (paragraph 13(2)). So paragraph 13(2) picks up only the £50,000 paid by C to B plus the £900,000 payable on completion, and not the full £1 million under the contract between A and B.

Ex 5.3.7 The second minimum amount is given by paragraph 14. The relevant parties are C and D, not B (paragraph 14(4)). The net amount of consideration given by D is £900,000 and the net amount of consideration given by C is £50,000 (paragraph 14(2)). So the second minimum amount is £950,000.

### Example 6 Series of subsales

Ex 6.1 This is an example of a series of subsales.

Ex 6.2 A enters into a sale and purchase agreement with B for some land with a consideration of £1 million. B pays A a deposit of £100,000.

Ex 6.3 B enters into a subsale agreement with C for £1 million, with C paying a deposit of £100,000.

Ex 6.4 C enters into a subsale agreement with D for £1.1 million, with D paying deposit of £200,000 to C.

Ex 6.5 The contracts are completed together. On completion, D pays C £900,000, C pays B £900,000, and B pays A £900,000.

Ex 6.6 B and C are chargeable on £1 million according to the normal rules in section 44. They can claim relief. D is chargeable on £1.1 million (see Ex 2.7 above).

### Example 7 Exchanges – assignments

Ex 7.1 A enters into a sale and purchase agreement with B for Plot 1 with a consideration of £1 million which reflects the market value of Plot 1. B pays A a deposit of £500,000.

Ex 7.2 B assigns its interest under the contract to C in return for consideration of Plot 2 from C. Plot 2 is worth £400,000. This is acceptable to B because the site of Plot 2 is commercially beneficial to B.

Ex 7.3 On completion, C pays A £500,000 for Plot 1.

Ex 7.4 C has entered into one transaction as purchaser (the acquisition of Plot 1 by C) in consideration of entering into another transaction as vendor in another (the acquisition of Plot 2 by B). Section 47 and paragraph 5 of Schedule 4 apply.

- Ex 7.5 B is chargeable on a notional land transaction under paragraph 5 for which relief can be claimed. The chargeable consideration is £1 million.
- Ex 7.6 B is chargeable on the acquisition of Plot 2 from C. The chargeable consideration is determined by paragraph 5 of Schedule 4. This is the greater of the market value of Plot 2 (£400,000) and the amount B gave for it. B gave the value in money's worth of the right to complete on Plot 1, that is £500,000. That amount cannot be apportioned in any way as it was not given for anything other than as consideration for Plot 2. So the chargeable consideration is £500,000.
- Ex 7.7 C is chargeable on the acquisition of Plot 1. The chargeable consideration is given by paragraph 5 of Schedule 4. The market value of Plot 1 is £1 million. Paragraph 1 of Schedule 4, read according to paragraph 5 of Schedule 2A, would give chargeable consideration of £900,000 – the £500,000 given by C to A on completion plus the consideration given for the assignment, namely the £400,000 value of Plot 2. So the chargeable consideration would be the larger amount: £1 million.

#### Example 8 Exchanges – subsales

- Ex 8.1 A enters into a sale and purchase agreement with B for Plot 1 with a consideration of £1 million which reflects the market value of Plot 1. B pays A a deposit of £500,000.
- Ex 8.2 B enters into a subsale agreement for Plot 1 with C, for consideration of £500,000 cash plus Plot 2. Plot 2 has a market value of £400,000. This is acceptable to B because the site of Plot 2 is commercially beneficial to B. The agreements are completed at the same time and in connection with each other.
- Ex 8.3 C has entered into one transaction as purchaser (the acquisition of Plot 1 by C) in consideration of entering into another transaction as vendor in another (the acquisition of Plot 2 by B). Section 47 and paragraph 5 of Schedule 4 apply.
- Ex 8.4 B is chargeable on the acquisition of Plot 1 from A but can claim relief.

Ex 8.5 B is also chargeable on the acquisition of Plot 2 from C. The chargeable consideration is determined by paragraph 5 of Schedule 4. This is the greater of the market value of Plot 2 (£400,000) and the amount B gave for it, that is, the value in money's worth of Plot 1 apportioned on a just and reasonable basis between the cash consideration received by B and Plot 2 (£500,000). The larger amount is £500,000.

Ex 8.6 C is chargeable on the acquisition of Plot 1. The chargeable consideration is given by paragraph 5 of Schedule 4. The market value of Plot 1 is £1 million. The consideration given by paragraph 1 of Schedule 4, read according to paragraph 9 of Schedule 2A, would give chargeable consideration of £900,000. So the chargeable consideration would be the larger amount of £1 million.

#### Example 9 Acquisition by a connected company

Ex 9.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1 million which reflects the market value of the land. Completion is set for two years after the agreement is entered into.

Ex 9.2 After one year, the market value of the land has increased to £1.1 million. B enters into a subsale agreement with C for consideration of £900,000. C is a company connected with B. Both agreements are completed at the same time and in connection with each other.

Ex 9.3 B is chargeable on its acquisition of the land and can claim relief.

Ex 9.4 C is chargeable on its acquisition of the land. In the first instance, the chargeable consideration given by paragraph 9 (as it applies to paragraph 1 of Schedule 4) is £900,000.

Ex 9.5 The deemed market value rule in section 53 does not apply because the vendor for C's acquisition is A (paragraph 10(4)). So the chargeable consideration is not increased to £1.1 million.

Ex 9.6 However, B and C are connected so the minimum consideration rule applies to increase the chargeable consideration for C's acquisition to £1 million.

## Example 10 Partnerships

- Ex 10.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1 million which reflects the market value of the land.
- Ex 10.2 B enters into a subsale agreement with C for consideration of £1 million. C is a partnership in which B has a 90 per cent partnership share. The two agreements complete at the same time and in connection with each other.
- Ex 10.3 B is chargeable on its acquisition of the land and can claim relief.
- Ex 10.4 C is chargeable on its acquisition of the land. The chargeable consideration given by paragraph 9 (as it applies to paragraph 1 of Schedule 4) is £1 million. C does not get the benefit of the rules for special partnership transactions in Part 3 of Schedule 15 because the vendor for C's acquisition is A (paragraph 10(4)).

## Example 11 Novation

- Ex 11.1 This is an example of how the rules apply to a novation.
- Ex 11.2 A enters into a sale and purchase agreement with B for some land with a consideration of £1 million payable on completion.
- Ex 11.3 A, B and C enter into a deed of novation under which: C replaces B as the purchaser of the land; and C pays B £100,000 in consideration for B relinquishing its rights under the first contract. Under the deed, A and B are released from any obligations to each other. Following the deed of novation, the original contract between A and B no longer exists. It has been replaced by a new contract between A and C.
- Ex 11.4 C completes the new contract to acquire the land from A and pays A £1 million.
- Ex 11.5 The novation is a pre-completion transfer (paragraph 1(1)-(2) and (5)). It is a free-standing transfer (paragraph 2(2)). It is not an assignment of rights under paragraph 2(1) because C's right to call for a conveyance is not a right under the original contract but rather it is a right under the new contract. C is not regarded as entering into a land transaction by reason of the novation (paragraph 3).

- Ex 11.6 On completion, C is the purchaser under a land transaction as per section 44(3). The chargeable consideration under paragraph 9(2) is £1.1 million.
- Ex 11.7 B is not the purchaser under a land transaction so is not required to file a land transaction return and has no need to claim relief.