

2006 Pre-Budget Report



**HM Revenue
& Customs**

PBRN 17

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STAMP DUTY LAND TAX: ANTI-AVOIDANCE MEASURES

Who is likely to be affected?

1. Those who are parties to schemes designed to avoid stamp duty land tax (SDLT).

General description of the measure

2. The Treasury have today made Regulations (The Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006) that make ineffective a number of schemes designed to avoid stamp duty land tax.

Operative date

3. The measure will have effect on and after 6 December 2006. There are transitional provisions to protect those who entered into contractual commitments before 2p.m. on 6 December 2006.

Current law and proposed revisions

4. Stamp duty land tax legislation is currently set out in Part 4 of Finance Act 2003, as amended. The purpose of the Regulations is to counter avoidance of SDLT by changing the legislation in two respects.
5. The first change provides that
 - where one person disposes of a chargeable interest and another person acquires that interest, or one derived from it,
 - a number of transactions (the 'scheme transactions') are involved in the disposal and acquisition, and
 - the stamp duty land tax chargeable on all the scheme transactions is less than that which would have been chargeable on a single land transaction; the chargeable consideration for which is the total consideration given or receivedthen the scheme transactions are disregarded and there is a notional land transaction; the chargeable consideration for which is the total consideration given or received.

6. The effective date of the notional land transaction is the last date of completion of the scheme transactions or, if earlier, the last date on which a contract in respect of the scheme transactions is substantially performed.
7. Examples of schemes to which the Regulations might apply are:
 - The grant of a lease that gives the landlord the right to terminate the lease within a set period. The period expires without the landlord exercising the right and in return the tenant pays the landlord a sum of money.
 - A agrees to sell property to B Ltd, a company. On completion B Ltd transfers the property to its parent, C Ltd, by way of a dividend *in specie*.
 - V grants a lease for 999 years at a peppercorn rent to an unconnected nominee N. V assigns the freehold reversion to P. P pays N a sum of money in consideration of an agreement by N to vary the lease by inserting a provision giving P the right to terminate the lease.
8. The second change is to make a number of changes to Schedule 15 of Finance Act 2003 dealing with transfers into and out of partnerships, and transfers of partnership interests. The changes are as follows:
 - When calculating the 'sum of the lower proportions' for the purposes of paragraphs 10, 11, 18 or 19 of Schedule 15, partners that are connected with 'relevant owners' but which are not individuals are not treated as 'corresponding partners' in relation to that relevant owner.
 - However, on a transfer into a partnership which is subject to paragraph 10 of Schedule 15, relief similar to group relief can be claimed so that the tax payable is reduced to what it would have been if companies which were members of the same group as a relevant owner were treated as corresponding partners in relation to that relevant owner. There are claw back provisions similar to those applying to group relief.
 - Where there is a transfer of a partnership interest and the transferee is connected with the transferor but is not an individual then there is a charge under paragraph 14 of Schedule 15 regardless of whether consideration is given.
 - The application of the group relief provisions to transfers of partnership interests is clarified to put it beyond doubt that group relief claimed on such a transfer is subject to the claw-back provisions in paragraph 3 of Schedule 7 Finance Act 2003.
9. The Regulations are made under powers contained in section 109 Finance Act 2003. They take immediate effect, but cease to have effect unless approved by the House of Commons within 28 days.

Further advice

10. As the Regulations have effect only for a period of 18 months they will be replaced by legislation in Finance Bill 2007. In order to inform the Finance Bill legislation the Government invites representations on the Regulations.

11. If you would like to make representations, or have any questions about these changes, please contact Michael Lyttle on 020 7147 2792 (michael.lyttle@hmrc.gsi.gov.uk). Information about Pre-Budget Report measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk