

THE STAMP DUTY LAND TAX (VARIATION OF THE FINANCE ACT 2003) REGULATIONS 2006: TECHNICAL NOTE

1. This Note provides technical detail about The Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 ('the Regulations'). The Regulations were made on 6 December 2006 in order to counter schemes designed to avoid stamp duty land tax ('SDLT').
2. The Regulations were made by HM Treasury under powers contained in section 109 Finance Act 2003. They have immediate effect but cease to have effect unless they are approved by the House of Commons within a period of 28 (calendar) days beginning with the day on which they were made, disregarding any time when the House is adjourned for more than four days.
3. The Regulations cease to have effect after 18 months and accordingly they will be replaced by permanent provisions in Finance Bill 2007. The Government invites representations on the Regulations and any representations will be taken into account in drafting the Finance Bill 2007 provisions. Contact details are at the end of this Note.
4. The substantive part of the Regulations is the Schedule. The Schedule consists of two paragraphs. Paragraph 1 inserts a new section 75A into Finance Act 2003. Paragraph 2 amends the provisions in Part 3 of Schedule 15 Finance Act 2003 dealing with certain partnership transactions. Note that paragraph 2 is an anti-avoidance provision even though it is not explicitly described as such.
5. Statutory references are to Finance Act 2003 unless otherwise specified.

New section 75A

6. New section 75A applies where
 - one person disposes of a chargeable interest and another person acquires that interest, or a chargeable interest derived from it, and
 - a number of transactions ('scheme transactions') are involved in connection with the disposal and acquisition, and
 - the total SDLT payable in respect of all the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition (the 'tax saving' test).
7. 'Chargeable interest' is defined in section 48. The chargeable consideration for the notional land transaction that is taken into account for the tax saving test is discussed below.
8. The phrase 'involved in connection with' implies that there must be some connection between the disposal and acquisition on the one hand and the transactions on the other which goes beyond the fact that a number of transactions happen in chronological order. However, it is not necessary that the transactions should be interdependent.

EXAMPLE

V sells two properties at arm's length to third party purchasers N1 and N2. At some later stage, and in transactions which are not connected in any way with the

purchases by N1 and N2, P buys both properties at arm's length. These transactions would not be within section 75A.

9. Where section 75A applies the individual scheme transactions are disregarded for SDLT purposes and SDLT is instead charged on the notional land transaction.
10. The chargeable consideration for the notional land transaction (and for the tax saving test) is the largest amount (or aggregate amount) given or received by any person in respect of the scheme transactions.
11. In determining what is a scheme transaction 'transaction' includes any land transaction but is not limited to land transactions. New section 75A gives examples of what might be scheme transactions but the list is not exhaustive. In particular, a scheme transaction includes any kind of arrangement whether it could otherwise be described as a transaction.
12. 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.
13. For the purposes of section 75A an interest in a partnership is treated as a chargeable interest so far as it concerns land owned by the partnership.
14. The notional land transaction attracts any relief which it would attract if it were an actual land transaction.
15. Some reliefs involve a number of transactions where the tax saving test may be satisfied. Accordingly, section 75A does not apply where the tax saving test is satisfied by reason only of sections 71A to 73 (alternative property finance) or a provision in Schedule 9 (right to buy, shared ownership leases, &c).
16. EXAMPLES

The following examples illustrate the application of section 75A on the assumption that the tax saving test is satisfied. **HM Revenue & Customs does not accept that the tax saving test is necessarily satisfied in any of these examples.**

(1) V grants a 999-year lease to N for no premium and a peppercorn rent. V assigns the freehold reversion to P for a nominal sum. P pays N £X in consideration of N's agreement to vary the lease by the insertion of a provision giving the landlord the right to terminate the lease for no payment. P exercises the right to terminate.

The notional land transaction is the acquisition of the freehold by P with chargeable consideration of £X.

(2) V grants a 999-year lease to N for no premium and a peppercorn rent. The lease includes a right for the landlord to terminate the lease on payment of £X to the tenant. V assigns the freehold reversion to P for a nominal sum. P exercises the right to terminate and pays N £X.

The notional land transaction is the acquisition of the freehold by P with chargeable consideration of £X.

(3) V grants a 999-year lease to P for no premium and a peppercorn rent. The lease gives the landlord a right to terminate it within 14 days of the date of grant.

P offers to pay V £X if V allows the 14 days to elapse without exercising the right to terminate. V does so.

The notional land transaction is the grant of a 999-year lease by V to P with chargeable consideration of £X.

(4) V agrees to sell property to N for £10 million. N agrees to sub-sell the property to P for £5. Both transactions are completed at the same time.

The notional land transaction is the acquisition of the property by P and the chargeable consideration is £10 million (the largest amount received by any person in respect of the scheme transactions).

(5) V agrees to sell property to N Ltd for £10 million. N Ltd declares a dividend in favour of P, its sole shareholder, the dividend to consist of the property and to be paid at the same time as completion of the V–N Ltd contract. The contract is completed and the property transferred to P.

The notional land transaction is the acquisition of the property by P and the chargeable consideration is £10 million (the largest amount received by any person in respect of the scheme transactions).

Amendments to the partnership provisions

17. There are amendments to

- the charge on transfers into partnerships set out in paragraphs 10-12 of Schedule 15
- the charge on transfers out of partnerships set out in paragraphs 18-20 of Schedule 15
- the charge on transfers of an interest in a property-investment partnership set out in paragraph 14 of Schedule 15.

18. The amendments to paragraphs 10-12 of Schedule 15 concern the calculation of the ‘sum of the lower proportions’ (‘SLP’). Before amendment the calculation provided for the interest of partners connected with a transferor to be included in the calculation of SLP. The amendments restrict this so that interest of a partner connected with a transferor is included in the calculation of SLP only if that partner is an individual.

19. However, where a partner is a member of the same group as a transferor the amendments provide for relief, so that the charge is reduced to what it would have been if the interest of that partner had been included in the computation of SLP. This relief is governed by the same provisions that apply to group relief, with minor modifications.

EXAMPLE

A Ltd, B Ltd, C Ltd and D are partners, sharing profits 40:35:15:10. A Ltd and B Ltd are members of the same group, owned by Mr X. C Ltd is also owned by Mr X, but is not a member of the same group as A Ltd and B Ltd. D is unconnected.

A Ltd transfers property into the partnership. Before the amendments SLP would have been 90, so there would have been a charge on 10% of the market value of the property. Following the amendments SLP is 40 because the interests of companies connected with the transferor are not included. So there is a charge on

60% of the market value of the property. However, relief is available in respect of B Ltd's 35% interest to reduce the charge to 25% of the market value. This relief will be withdrawn if (for example) B Ltd ceases to be a member of the same group as A Ltd while the partnership still owns the property.

20. The amendments to paragraphs 18-20 of Schedule 15 concern the calculation of the 'sum of the lower proportions' ('SLP'). Before amendment the calculation provided for the interest of partners connected with a transferor to be included in the calculation of SLP. The amendments restrict this so that interest of a partner connected with a transferor is included in the calculation of SLP only if that partner is an individual.
21. For paragraphs 18-20 there is no relief similar to that described in paragraph 19 above.
22. The amendments to paragraph 14 of Schedule 15 make two changes. First, they provide that where there is a transfer of a partnership interest, and the transferee is a person connected with the transferor who is not an individual, there is no requirement (as there currently is in paragraph 14(1)(b)) for consideration to be given.
23. Second, they clarify existing legislation to put it beyond doubt that the provisions for recovery of group relief apply where group relief is claimed on the transfer of a partnership interest.
24. Enquiries as to the application of these provisions to specific transactions should be made to Birmingham Stamp Taxes. Representations should be made to:
[Birmingham Stamp Office](#).
9th Floor
City Centre House
30 Union Street
Birmingham
B2 4AR