

BUDGET 2004

STAMP DUTY LAND TAX

BUDGET RESOLUTIONS 64 'STAMP DUTY LAND TAX: MISCELLANEOUS AMENDMENTS' AND 65 'STAMP DUTY LAND TAX: SHARED OWNERSHIP LEASES

A TECHNICAL GUIDE

This note explains the contents of Budget Resolutions 64 'Stamp Duty Land Tax: Miscellaneous Amendments' and 65 'Stamp Duty Land Tax: Shared Ownership Leases'.

The Budget Resolutions amend Finance Act 2003, with immediate but temporary effect, by virtue of powers in the Provisional Collection of Taxes Act 1968. In general the amendments apply to land transactions the effective date of which is after 17 March 2004. The contents of the Resolutions will be included in Finance Bill 2004 in order that they should have permanent effect.

The changes taking effect after today will affect only larger and more complex transactions. In any case, many of changes merely clarify the intention of the legislation. The vast majority of purchasers will be completely unaffected.

There are other changes to the SDLT legislation being announced on 17 March. This legislation will be included in Finance Bill 2004 when it is published and these changes will take effect from Royal Assent to Finance Act 2004.

Resolution 64

Paragraph (1) provides that the Resolution amends Finance Act 2003.

Paragraph (2) deals with variations of a lease and provides that there is no charge on such a variation under section 43(3)(c) FA 2003. It follows that the only variations which give rise to a charge, in both instances on the tenant, are those which extend the term and/or increase the rent.

Paragraph (3) is part of the changes relating to agreements for leases (*paragraph (17)*) and leases of land (*paragraph (19)*).

Paragraphs (4), (6), (7), (8) and (10) apply where a contract is entered into whereby one party to the contract (B) has the right to direct a conveyance to himself or to a third party (C). An example is a development agreement where the developer has the right to enter on the land and build on it and then direct the conveyance of the completed plots. The new provisions put it beyond doubt that such a contract is charged to SDLT when it is substantially performed (in the same way as a contract which is to be completed by a conveyance to B). They also ensure that it is the consideration that is given by B that is charged to SDLT once substantial performance occurs. They also contain provision similar to section 45 FA 2003 to deal with the assignment or transfer of rights under such a contract. These amendments apply to any contract entered into, or transfer of rights occurring, after 17 March 2004.

Paragraph (5) applies to assignments, sub-sales and other transfers of rights under a contract.

Sub-paragraph (a) is part of the changes relating to agreements for leases (paragraph (17)).

Sub-paragraph (b) is a drafting correction.

Sub-paragraph (c) deals with a transfer of rights over part only of the subject matter of the original contract. The last sentence of section 45(3) FA 2003 applies where there is a contract between A and B, B sub-sells or assigns to C and the sale to C is completed without earlier substantial performance of the contract between A and B. In such a case there is no charge on B. *Sub-paragraph (b)* clarifies how this relief works when only part is transferred to C by deeming there to be two separate A–B contracts, one relating to the part transferred to C and one to the rest of the subject matter of the original contract.

Sub-paragraph (d) ensures that where B and C are part of the same corporate group then C cannot claim group relief

These amendments apply to any transfer of rights occurring after 17 March 2004.

Paragraph (9) deals with relief for sale and leaseback transactions. *Sub-paragraph (a)* is a drafting correction. *Sub-paragraph (b)* denies relief where (i) the sale is a transfer of rights within the meaning of section 45 or (ii) the parties to the transaction are members of the same corporate group.

Paragraph (11) cross-refers section 119 to various definitions of ‘effective date’.

Paragraph (12) relates to the issue discussed above under paragraph (5) *sub-paragraph (c)*.

Paragraph (13) deals with two aspects of the definition of consideration in Schedule 4 FA 2003.

Sub-paragraph (a) concerns the carrying out of works. An obligation to carry out works is not treated as consideration provided certain conditions are met. One of those conditions is that the works are carried out after the effective date of the transaction. This will often happen where there is a contract whereby the land will be sold, or a lease granted, on satisfactory completion of works. The contract is subject to section 44 FA 2003 and there is a charge on substantial performance, normally when the developer takes possession. This is before the developer carries out any works. However the subsequent sale or lease is a second notifiable transaction by virtue of section 44(8) and this will be after the works have been completed. *Sub-paragraph (a)* provides that the ‘date of works’ condition is met for this second transaction if it was met for the first.

Sub-paragraph (b) applies to relief for PFI transactions (which operates by deeming various things not to be chargeable consideration) and ensures that such transactions are notifiable even if there is no chargeable consideration.

Paragraph (14) deals with the definition of ‘rent’ under a lease and excludes any amounts that are payable in respect of a period before the grant of a lease. Such amounts will be taxed as premiums.

Paragraph (15) deals with leases which are expressed to run from a period earlier than the date of grant (often from the preceding quarter day) and in consequence there is a rent review just before the end of year 5. In computing the net present value the rent for year 5 is only that up to the review date.

Paragraph (16) extends ‘overlap’ relief for lease surrender and re-grant to cases where a head lease is forfeited and in exercise of a statutory right a sub-tenant requires the head lessor to grant a new lease to him

Paragraph (17) deals with agreements for leases in England & Wales and Northern Ireland. Such agreements are often treated in practice as leases. Accordingly this paragraph charges SDLT on agreements, once they are substantially performed, as if they were leases. Furthermore when a lease is granted in pursuance of the agreement this is treated as a lease surrender and re-grant.

The paragraph also provides that assignments of agreements for leases are taxed in the same way as assignments of leases.

Paragraph (18) is a drafting correction on lease surrender and re-grant.

Paragraph (19) deals with Scottish leases and contains provisions broadly similar to paragraph (17) on agreements for leases, but applying only to an exchange of missives of let which does not itself constitute a lease.

Paragraph (20) deals with transitional provisions. The Government’s intention has always been that:

- where a contract was entered into before 11 July 2003
- not substantially performed before that date
- and then varied or assigned on or after that date
- or where there was a sub-sale of the subject matter of the transaction on or after that date

then the transaction, if completed or substantially performed on or after 1 December 2003 is an SDLT transaction. This paragraph ensures that the government’s intention is achieved for sub-sales (the fourth bullet point above). This amendment does not apply to a contract which was substantially performed before 17 March 2004.

The remaining paragraphs deal with commencement dates and definitions.

Resolution 65

Paragraph (1) provides for new paragraph 4A to be inserted into Schedule 9 of Finance Act 2003.

This new paragraph provides for:

- i. Clarification that under the SDLT regime, where a shared ownership lease is granted and the lessee makes a market value election under Schedule 9 paragraph 2 or Schedule 9 paragraph 4, no further liability to SDLT arises if the lessee decides to acquire an additional share of the property.
- ii. An exemption from SDLT for 'intermediate staircasing' where a shared ownership lease is granted and the lessee does not make a market value election (preferring instead to pay on the premium and rental under the lease). These transactions will typically - though not always - increase the lessee's share of the dwelling from 50% to 75%. This exemption is conditional in that immediately after such a staircasing transaction, the share of the dwelling held by the lessee must not exceed 80%. The effect of this is to provide similar treatment to that under the old stamp duty regime.

Paragraph (2) amends Schedule 9 Paragraph 5(1) of Finance Act 2003 in order to take account of new paragraph 4A.

Paragraph (3) deals with transitional provisions. It ensures that those who were granted a shared ownership lease under the old stamp duty regime *and* made a market value election do not become liable to SDLT should they acquire an additional share of their property under the SDLT regime.