

# Stamp duty land tax (SDLT) Technical News

## Issue 5 – August 2007

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## **SDLT Finance Act changes 2007**

The main SDLT changes contained in the Finance Act 2007, which received Royal Assent on 19 July 2007 are:

- SDLT rates and thresholds remain unchanged by Budget 2007.

For transactions with an effective date on or after 22 March 2007:

- Reliefs for alternative property finance will be extended, to allow dealings in the interest held by the financial institution to take place free of SDLT. Further details about this measure are published in [Technical Note](#).

Apart from the extension of reliefs for 'alternative property finance' there were no changes which took effect before Royal Assent to the Finance Bill.

### **From Royal Assent to the Finance Bill:**

- The relief from SDLT offered to shared-ownership leases will be replicated for shared ownership trusts (a new way of providing affordable housing).
- The exchange of property between connected persons will no longer be treated as a linked transaction for the purposes of SDLT.
- Existing stamp duty and SDLT reliefs for certain transfers of surplus school land under provisions in the School Standards and Framework Act 1998 will be repealed. These provisions are amended by the Education and Inspections Act 2006 and Regulations will be introduced to bring transactions under the amended provisions within the general SDLT relief for statutory transfers involving public bodies.
- The Government will make two minor changes to SDLT legislation which will facilitate development of electronic conveyancing and registration systems.
- There will be permanent provision to counter SDLT avoidance schemes, replacing the Regulations made on 6 December 2006. These provisions, in particular, increase the number of circumstances in which a charge on a partner in property investment partnership can arise, for example, where there are new properties added into the investment portfolio on or after Royal Assent and where there are changes to profit sharing ratios.

For those of you who read documents placed on the HMRC website following Budget 2007, we regret that there was a slight discrepancy between what paragraph 3 of Budget Note 22 says about the effective date of the anti-avoidance measures and what was in the Finance Bill.

**The Budget Note stated "This change will have effect for any transaction the effective date of which is on or after the date on**

**which Finance Bill 2007 receives Royal Assent."** At the time of the Budget this was what we were planning to do but following further discussion of our draft legislation our intentions changed.

**We would therefore like to clarify that as Clause 71 was enacted in its current form by the Finance Act 2007, the version of section 75A contained in the Act (and not that in the Regulations) will apply to any transaction on or after 6 December 2006, subject to the transitional provisions.**

- Changes will be made to the stamp duty and stamp duty land tax acquisition reliefs. A company that has purchased its own shares will no longer be regarded as a shareholder of itself for the purpose of the reliefs.

#### **From 1 October 2007:**

A time limited relief from SDLT for most zero-carbon homes on first acquisition will be introduced to help kick start the market for new technologies and techniques that will be needed to support the Government's ambition that all new homes be zero carbon by 2016. The relief will be available on the first sale of new zero-carbon homes from 1 October 2007. [More details.](#)

More detail on specific measures can be found on the [Budget 2007 page](#).

#### **Finance Act 2007 measure in relation to form SDLT 60**

Section 81 of the Finance Act 2007 which inserts a new paragraph 2A into Schedule 11 FA 2003 only allows agents to sign an SDLT 60 self-certificate where this is in a form specified by HMRC for this purpose. This measure is intended to allow electronic submission of self-certificates to Registers of Scotland via the ARTL (Automated Registration of Title to Land) system and in due course to the Land Registry via the forthcoming e-Conveyancing system.

Although we had not intended to extend this facility to the paper SDLT 60 we will consider whether there is any merit to doing such. Meanwhile agents should not amend the form in order to sign it on their clients' behalf; it will not be accepted by the land registries.

#### **Section 75A Finance Act 2003**

1. Section 75A FA 2003 is intended to counter certain schemes which have the effect of reducing stamp duty land tax (SDLT) liability. Section 75A exists in two versions. The first was introduced by The Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (2006 SI No 3237) ('the Regulations'). The Regulations were made on 6 December 2006. The second was introduced by section 71 FA 2007 (which also introduces supplementary provision in sections 75B and 75C).

## **Commencement**

2. The FA provisions have effect (replacing the provisions in Regulations) in respect of disposals and acquisitions if
  - the disposal (see below) takes place after 2 p.m. on 6 December 2006, and
  - all the scheme transactions (see below) take place after that time.
3. However section 75C does not have effect where a disposal takes place before 19 July 2007 (the date of Royal Assent to FA 2007) and the effect of section 75C would be to impose a higher tax charge than that provided for in the Regulations.
4. The transitional provisions are set out in paragraphs 35-37 below

## **General application of section 75A**

5. Section 75A applies where
  - one person ('V') disposes of a chargeable interest
  - another person ('P') acquires that interest, or a chargeable interest derived from it, and
  - a number of transactions ('scheme transactions'), including the disposal and acquisition, 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).
6. 'Chargeable interest' is as defined in section 48. 'Disposal' and 'acquisition' have the extended meanings set out in section 43.

## **Scheme transactions**

7. The term 'transaction' includes in particular:
  - a transaction which is not a land transaction;
  - an agreement, offer or undertaking not to take specified action;
  - any kind of arrangement whether or not it could otherwise be described as a transaction;
  - a transaction which takes place after the acquisition by P of the chargeable interest.
8. Section 75A(3) gives examples of what may be scheme transactions:
  - the acquisition by P of a lease deriving from a freehold owned or formerly owned by V;

- a sub-sale to a third person;
- the grant of a lease to a third person subject to a right to terminate;
- the exercise of a right to terminate a lease or to take some other action;
- an agreement not to exercise a right to terminate a lease or to take some other action;
- the variation of a right to terminate a lease or to take some other action.

### **Scheme transactions ‘involved in connection with’ a disposal and acquisition**

9. The first three bullet points in paragraph 5 above must be read together. Thus the first step is to identify a disposal and the relevant V, the second step is to identify an acquisition and the relevant P and the third step is to consider whether a number of transactions are ‘involved in connection with’ the disposal and acquisition. In a complex scenario this process may need to be repeated with different identifications of V and P, possibly with different results.
10. 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, and that they affect the same property.
11. In particular it is unlikely that (except on a transfer of rights, see below) section 75A can apply to a disposal by V and an acquisition by P where
  - neither P nor his associates nor his advisers have had any involvement in or any connection with transactions other than the one by which P acquired the property, *and*
  - neither P nor his associates obtains any SDLT benefit from the way in which the acquisition is effected
12. However section 75A will apply where the acquisition by P is effected by a ‘transfer of rights’ within the meaning of section 45, for example a sub-sale. So if V agrees to sell to X and X agrees to sell on to P section 75A applies to the disposal by V and the acquisition by P whether or not P or his associates or his advisers had any involvement in or connection with the V–X contract.
13. Section 75A(1)(b) refers to the scheme transactions as being ‘involved in connection with’ *the disposal and acquisition*. Thus scheme transactions need not necessarily be connected with each other. For example, if V agrees to sell to X and X agrees to sell to P the two transactions are ‘involved in connection with’ the disposal by V and the acquisition by P even if V is unaware of the sale on by X.

14. There follow some examples where section 75A does not apply to a disposal by V and an acquisition by P because there are not a number of transactions involved in connection with the disposal and acquisition.

#### Examples

- (1) 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. Section 75A does not apply as regards the disposal by V and the acquisition by P.
- (2) V grants a long lease to X. At a later stage, and in a transaction which is not connected in any way with the grant of the lease, X assigns the lease to an unconnected third party P. P exercises a statutory right of enfranchisement. Section 75A does not apply as regards the disposal by V and the acquisition by P.
- (3) V grants an option to purchase land to X. At a later stage, and in a transaction which is not connected in any way with the grant of the option, X assigns the benefit of the option to an unconnected third party P. P exercises the option. Section 75A does not apply as regards the disposal by V and the acquisition by P.
- (4) V agrees to sell land to H. H agrees to sell on to his spouse W. These transactions are completed at the same time. At a later stage W sells on to an unconnected third party P. Section 75A does not apply as regards the disposal by V and the acquisition by P (although section 75A will apply as regards the disposal by V and the acquisition by W).
- (5) V agrees to sell land to P. P agrees to sell on to C. The transactions are completed at the same time. Section 75A does not apply as regards the disposal by V and the acquisition by P (although section 75A will apply as regards the disposal by V and the acquisition by C). The sale on to C is not 'involved in connection with' the disposal by V and the acquisition by P because it does not in any way affect the nature of the interest acquired by P.

15. There follow some examples where a number of transactions *are* involved in connection with a disposal by V and an acquisition by P.

#### 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.
- (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.
- (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 (an example of a scheme transaction which occurs after the acquisition of the chargeable interest by P).

(4) V agrees to sell property to N for £10 million. N agrees to sub-sell the property to P. Both transactions are completed at the same time. (See the note above on the application of section 75A where an acquisition is effected by means of a 'transfer of rights').

(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 tax-saving test and notional consideration**

16. If there is a disposal and acquisition, and a number of transactions are involved in connection with the disposal and acquisition, the final step is to consider the tax saving test. For this purpose it is necessary to identify the 'amount that would be payable on a notional land transaction' and compare the SDLT payable on that amount with the sum of the amounts of SDLT payable in respect of the scheme transactions.

17. The amount that would be payable on a notional land transaction (referred to in this guidance as the 'notional consideration') is specified in section 75A(5). It is the largest amount (or aggregate amount):

- given by or on behalf of any one person by way of consideration for the scheme transactions, or
- received by or on behalf of V (or a person connected with V) by way of consideration for the scheme transactions.

18. 'Connected with' has the same meaning as in section 839 ICTA 1988.

19. The following show how the notional consideration is calculated.

#### **Examples**

**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 consideration is £X, the amount given by P and received by N.

(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 consideration is £X, the amount paid by P and received by N.

(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 (an example of a scheme transaction which occurs after the acquisition of the chargeable interest by P).

The notional consideration is £X, the amount paid by P and received by V.

(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 consideration is £10 million, the amount received by V.

(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 consideration is £10 million, the amount received by V.

### **Incidental transactions**

20. In calculating the notional consideration the consideration properly attributable to 'incidental' transactions (on a just and reasonable apportionment) is disregarded. Incidental transactions are those that are *merely incidental* to the disposal by V and the acquisition by P.

21. Examples of incidental transactions are:

- the sale or supply of anything other than land (for example, the sale of chattels or moveables);
- the construction of a building on the subject matter of the disposal and acquisition;
- a loan to P secured by a mortgage, to enable P to pay for all or part of the chargeable interest he acquires.

22. However a transaction is not incidental if:

- it forms part of a process, or series of transactions, by which the disposal and acquisition are effected, or
- it is one of the examples of scheme transactions in section 75A(3) (paragraph 8 above), or
- (except in the case of the sale or supply of anything other than land) the disposal and acquisition is conditional on the completion of the transaction.

### **The effect of section 75A**

23. Where section 75A applies:

- the individual scheme transactions are disregarded for SDLT purposes
- there is instead a notional transaction effecting the acquisition of V's chargeable interest (that is the chargeable interest which was the subject matter of the disposal by V) by P

- the chargeable consideration for the notional transaction is the notional consideration (see above).

24. Thus in the Examples in paragraph 19 above the notional transaction is as follows (assuming again that the tax saving test is satisfied) and the chargeable consideration is the notional consideration as stated above:

- (1) The acquisition of the freehold by P.
- (2) The acquisition of the freehold by P.
- (3) The grant by V of a 999-year lease to P.
- (4) The acquisition of the property by P.
- (5) The acquisition of the property by P

25. The effective date of the notional 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.

26. Stamp duty land tax paid in respect of a land transaction which is disregarded because of the application of section 75A is treated as having been paid in respect of the notional transaction.

### **Other provisions**

27. A transfer of shares or securities (or units in a unit trust scheme) is ignored for the purposes of section 75A if it would otherwise be the first of a series of scheme transactions (and several such transfers are likewise ignored if they all precede any other scheme transaction).

28. The notional transaction attracts any relief which it would attract if it were an actual land transaction. In addition the consideration attributable to any scheme transaction which would qualify for relief under section 60, 61, 63, 64, 65, 66, 67, 69, 71, 74 or 75, or Schedules 6A or 8, is disregarded in calculating the notional consideration.

29. Some reliefs involve a number of transactions where the tax saving test will almost certainly 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).

30. If any of the scheme transactions is entered into for the purposes of or in connection with the transfer of an undertaking or part of an undertaking for the purposes of paragraphs 7 or 8 of Schedule 7 (reconstruction and acquisition relief) then the notional transaction is also deemed to be entered into for such purposes or in such connection. This enables the notional transaction to qualify for reconstruction or acquisition relief if the other conditions for relief are satisfied.

31. The notional transaction will be subject to the market value rule in section 53 if P is a company connected with V.

32. If part of the consideration for the notional transaction is a land transaction entered into by V as purchaser, or by P as vendor, then the market value rules in paragraph 5 of Schedule 4 will apply.

33. An interest in a property investment partnership is treated as a chargeable interest for the purposes of section 75A.

34. Where V or P is a partnership the provisions in Part 3 of Schedule 15 apply as they would to the transfer of a chargeable interest into or out of a partnership.

### **Transitional provisions**

35. Section 75A, and the Regulations, do not have effect in relation to:

- any scheme transaction which is effected in pursuance of a contract entered into and substantially performed before 2 p.m. on 6 December 2006 (the 'relevant time');
- any other scheme transaction which is effected in pursuance of a contract entered into before the relevant time and which is not an 'excluded transaction'.

36. For this purpose, a scheme transaction effected in pursuance of a contract is an excluded transaction if:

- at or after the relevant time the contract is varied in a way that significantly affects the scheme transaction,
- the subject-matter of the scheme transaction is not identified in the contract in a way that would have enabled its acquisition before the relevant time,
- rights under the contract are assigned at or after the relevant time,
- the scheme transaction is effected in consequence of the exercise, at or after the relevant time, of any option, right of pre-emption or similar right, or
- at or after the relevant time there is an assignment, sub-sale or other transaction (relating to the whole or part of the contract's subject-matter) as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him.

37. A contract is varied in a way that significantly affects the scheme transaction if (and only if):

- it is varied so as to substitute a different purchaser in relation to the scheme transaction,
- it is varied so as to alter the subject-matter of the scheme transaction, or
- it is varied so as to alter the consideration for the scheme transaction.

## **Partnership Property**

A chargeable interest is partnership property for SDLT purposes if:

- it is held by or on behalf of the partnership, or by all the members of the partnership, and
- it is held for the purposes of the partnership business

(paragraph 34 of Schedule 15 FA 2003).

These two tests must both be satisfied in order for a chargeable interest to be partnership property. Each is a question of fact. Often there will be an agreement between the partners which will be determinative as to the facts in the particular case.

In practice whether a chargeable interest is or is not partnership property for SDLT purposes will be decided in similar manner as whether or not it is partnership property by virtue of section 20 of the Partnership Act 1890. So a chargeable interest acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, will be partnership property for SDLT purposes.

The mere fact that a business is carried on in property belonging to one or more partners does not make that partner's chargeable interest partnership property. Where a chargeable interest is owned by all the partners then whether it is partnership property will depend upon the basis on which it is held by the co-owners.

It is unlikely (in England & Wales and Northern Ireland) that a chargeable interest in which the equitable interests were subject to an express declaration of joint tenancy on acquisition is partnership property unless there is clear evidence of a change of intention to bring the chargeable interest in as an asset of the partnership business.

There is further guidance on the definition of partnership property at [BIM72058](#). This article supersedes the guidance in draft [SDLTM35100](#).

## **SDLT Code of Practice 10 Extension**

At Budget 2007, HM Revenue & Customs (HMRC) announced that it would take forward the proposals in the [Review of Links with Large Business review](#) (published in November 2006). The second proposal was:

“The extension of existing clearances so that as normal business practice, HMRC will provide businesses with their view of the tax consequences of significant commercial issues whenever there is uncertainty.”

Code of Practice 10 (COP 10) (Information and Advice), the guidance on clearances, says that where there is genuine uncertainty about the meaning of the law HMRC will advise upon their interpretation of legislation passed in the last four Finance Acts. The proposal from the Review of Links with Large Business means that, by Budget 2008, regardless of when legislation was

enacted, HMRC will provide advice on the tax consequences of genuine significant commercial issues.

[Also announced at Budget 2007](#), was that during 2007/08, there would be an early extension of clearance work where there is genuine uncertainty regarding the interpretation of tax legislation (without time limit) in two particular areas of tax law:

- Stamp duty land tax from Royal Assent of Finance Act 2007; and
- Substantial Shareholding Exemption (SSE) from 01 June 2007

The Code of Practice 10 facility for the purpose of the Substantial Shareholding Exemption was reinstated on [1 June 2007](#). Following the Royal Assent of Finance Act 2007 on 19 July 2007 HMRC will now, in line with the commitment made at Budget 2007, be extending the application of the Code of Practice 10 for all businesses to areas of genuine uncertainty regarding stamp duty land tax without a time limit. This means that the Code of Practice facility will cover all stamp duty land tax legislation going back to its introduction in Finance Act 2003.

Clearance requests under Code of Practice 10 on stamp duty land tax matters should be submitted to

HM Revenue & Customs  
Birmingham Stamp Office (COP 10)  
9th Floor  
City Centre House  
30 Union Street  
Birmingham  
B2 4AR

### **SDLT1 question 9 (Are you claiming relief?) - the charities registration number that should be entered**

It is not uncommon for a corporate trustee – for example a charity in its own right - to be trustee of charitable trusts that are not separate persons but have their own charity numbers.

The charities registration number entered at question 9 on the SDLT1 Return should be that of the person which is the purchaser for SDLT purposes, as this is also the claimant of the relief. Where the legal purchaser purchases as a bare trustee, the purchaser for SDLT purposes will be the beneficial owner.

### **SDLT6 Guidance Notes - guidance on completing SDLT1 question 12**

#### **What form does the consideration take? - code 34 or 37**

For transactions where SDLT is chargeable on the **market value** of the property acquired rather than the actual consideration paid (for example, an exchange of properties where at least one of the interests is a major interest),

**code 34** should be used at question 12 unless it is an exchange in which case code 37 applies. See the guidance below contained within the SDLT6 Guidance Notes for using codes 34 and 37.

**'Other (such as an annuity) - Code 34** [SDLTM06010](#)

*Any other consideration, in money's worth, not otherwise listed here, or, as noted above, the market value of the interest in land acquired should be notified using code 34 except for exchanges where code 37 should be used*'.

Within this section of the guidance, the reference to the market value of land under Code 34 is intended to refer back to the note about market value and Code 34 on the preceding page. However we agree that the reference in the guidance notes could be made clearer and will consider dividing the Code 34 guidance into two bullets; one for annuities, and one for market value cases.

**The completion of question 12 is non-mandatory when the answer to question 2 is L**

The guidance within the SDLT6 Guidance Notes was changed in March 2007. Previously the guidance stated that SDLT1 question 12 was mandatory. However, following representations from users of the online service, we agreed to a change to the current version of the notes.

Customers may now ignore question 12 if they have entered L at question 2.

**Stamp Taxes Online Service - linked freehold transfer and grant of new lease**

Users can notify online a deal involving purchase of a freehold plus the grant of a lease (same parties). However as these are two different interests, the transactions have to be completed and submitted as separate transactions, as would be the case if completing on paper.

Each transaction should be marked as linked at 13.1 and the total consideration entered in 13.2. In question 10 the 'total consideration' should be apportioned to each interest.

We have now taken steps to make our [guidance](#) on this clearer.

**Consideration and exchanges**

Paragraph 5 of Schedule 4 FA 2003 charges SDLT by reference to the market value of the chargeable interest acquired when

- one or more land transactions is entered into by a person (alone or jointly) as purchaser
- wholly or partly in consideration of
- one or more other land transactions being entered into by him (alone or jointly) as vendor

- and the subject matter of any of the relevant transactions is a major interest (for example, the transaction is the transfer of a freehold, the grant of a lease or the assignment of a lease).

Put simply the provision imposes a market value charge where one land transaction takes place wholly or partly in consideration of another land transaction.

We have been asked about the meaning of 'in consideration of' in this provision. This article replaces paragraphs 2 and 3 of the article in [Technical Newsletter 2](#). The contents of this article will be incorporated in the Manual in due course.

In many cases a contract will provide expressly that land transaction 1 is wholly or partly in consideration of land transaction 2 and vice versa. If so paragraph 5 of Schedule 4 clearly applies.

If there is no such express reference then it is in our view a question of fact whether land transaction 1 is in consideration of land transaction 2.

In our view it is the element of 'reciprocity and mutuality', or 'quid pro quo', or 'give and take' that is crucial. Although land transactions are often preceded by a formal contract we do not consider that the existence of a prior contract is necessary in order for one land transaction to be in consideration of another. A contract that refers to both transactions will often be evidence that each is in consideration of the other but even in the absence of such a contract it might be clear from the circumstances that as far as the parties were concerned each transaction was in return for the other.

So if land transaction 1 is as a matter of fact in whole or part a quid pro quo for land transaction 2 then each is in consideration of the other.

Often an A to B land transaction takes place at the same time as one from B to A or to a person connected with A. In the absence of proof to the contrary, it would be inferred that land transaction 2 was a benefit in return for land transaction 1, and so each is in consideration of the other.

On the other hand, if land transaction 1 from A to B takes place at the same time as one from B to C (not connected to A), perhaps a lease of the land acquired by B, then in the absence of some linked benefit for A or a person connected with A, or some linked benefit from land transaction 1 for C or a person connected to C, then land transaction 1 would not be in consideration of land transaction 2. Such benefit might arise from an associated land transaction 3 from C to A.

Mere incidental benefit to A or a person connected with A which happens to arise from land transaction 2 would not be sufficient to make it be in consideration of land transaction 1.

Completion of the land transactions need not be at the same time. Land transaction 1 from A to B may be in consideration of an agreement by B to

make land transaction 2 to A at a later date. Whether there is such an agreement would be a matter of fact and inference from fact. If land transaction 2 is soon after land transaction 1 then it is likely to have been agreed at the time of land transaction 1, but it would be possible to show that it arose because of some unexpected change of circumstance in the intervening period.

### **Nature of consideration**

As regards the test for what is consideration we will be guided by we will be guided by the comments of the Court of Session in *Glenrothes Development Corporation v IRC* [1994] STC 74 (although this case concerned stamp duty the meaning of consideration is in our view the same for SDLT as it was for stamp duty, subject to any express provision to the contrary).

The Court indicated that 'consideration' must be construed according to its ordinary meaning and not by reference to any technicalities peculiar either to English or to Scottish law. Thus for SDLT purposes 'consideration' does not in our view have the technical meaning peculiar to the law of contract.

The judges made a number of comments about the nature of consideration for stamp duty purposes:

- 'closely linked in its ordinary meaning to the principle of mutuality of contractual obligations' (the Lord President at page 80)
- 'what the purchaser had to do in order to compel implementation by the seller of his obligations' (same page)
- 'the ordinary meaning of the word involves the element of reciprocity or mutuality between the obligation to provide it and that or those in respect of which it is given' (Lord Morison at page 82)
- 'something given or promised in return for something else' (Lord Mayfield at page 83)
- 'the element of reciprocity or mutuality' (Lord Mayfield at page 84)
- 'what the purchasers paid in exchange for implement of the seller's obligations to provide title' (Lord Mayfield at page 85).

### **Section 77**

We are conscious that section 77 presents us with opportunities for simplification and deregulation and it is an area we shall continue to keep under review. For example, certain practitioners have suggested to us that it seems odd that they do not need to complete an SDLT1 Return for assignment (whole or part) of a short lease for small consideration but they do need to complete it for a surrender.

### **'Major interests'**

In particular, we have recently received queries concerning “major interests” as described in section 77. For example, section 117 refers to fee simple or term of years, however there has been a difference in whether or not practitioners consider that granting a freehold right of way for say £100k is “major”, and therefore use form SDLT60 to notify the transaction instead of an SDLT1 Return.

Our view is that the definition is, as the wording suggests, intended to mirror the wording of section 1(1) LPA 1925. The words 'in equity' are intended to extend the scope of 'major interest' to equitable interests which are equivalent to an estate capable of subsisting at law. So interests which are within section 1(2), such as those mentioned in section 1(2)(a), and their equitable equivalents, are not major interests.

In addition, we would not wish to argue that an undivided share was a major interest.

Freehold easements and easements for a term of years are not major interests.

#### **A minor can be the purchaser of a chargeable interest**

There is no reason why a minor should not be the purchaser of a chargeable interest for SDLT purposes. This would normally be by operation of paragraph 3 of Schedule 16.

#### **Transfer of property on winding up - loan from shareowners**

We would not seek to argue that the dividend in specie should bear SDLT in a situation for example where A owns the shares of B Ltd. A lends money to the company to buy property, the loan being secured by mortgage on the property.

Later B Ltd is wound up and there is a transfer to A as beneficial owner of the equity. That is the reason for the Transfer. The loan is not released etc. but obviously the mortgage will be taken off as the lender also owns the property because of the liquidation.

Clearly in this scenario A has not assumed any liability or given any other form of consideration.

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