



Finance Act 2007

2007 CHAPTER 11

PART 5

SDLT, STAMP DUTY AND SDRT

SDLT: anti-avoidance provisions

71 Anti-avoidance

- (1) In FA 2003, after section 75 insert (in place of the section inserted by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/ 3237))—

“75A Anti-avoidance

- (1) This section applies where—
- (a) one person (V) disposes of a chargeable interest and another person (P) acquires either it or a chargeable interest deriving from it,
 - (b) a number of transactions (including the disposal and acquisition) are involved in connection with the disposal and acquisition (“the scheme transactions”), and
 - (c) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition of V's chargeable interest by P on its disposal by V.
- (2) In subsection (1) “transaction” includes, in particular—
- (a) a non-land transaction,
 - (b) an agreement, offer or undertaking not to take specified action,
 - (c) any kind of arrangement whether or not it could otherwise be described as a transaction, and
 - (d) a transaction which takes place after the acquisition by P of the chargeable interest.

Status: Point in time view as at 19/07/2007.

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- (3) The scheme transactions may include, for example—
- (a) the acquisition by P of a lease deriving from a freehold owned or formerly owned by V;
 - (b) a sub-sale to a third person;
 - (c) the grant of a lease to a third person subject to a right to terminate;
 - (d) the exercise of a right to terminate a lease or to take some other action;
 - (e) an agreement not to exercise a right to terminate a lease or to take some other action;
 - (f) the variation of a right to terminate a lease or to take some other action.
- (4) Where this section applies—
- (a) any of the scheme transactions which is a land transaction shall be disregarded for the purposes of this Part, but
 - (b) there shall be a notional land transaction for the purposes of this Part effecting the acquisition of V's chargeable interest by P on its disposal by V.
- (5) The chargeable consideration on the notional transaction mentioned in subsections (1)(c) and (4)(b) is the largest amount (or aggregate amount)—
- (a) given by or on behalf of any one person by way of consideration for the scheme transactions, or
 - (b) received by or on behalf of V (or a person connected with V within the meaning of section 839 of the Taxes Act 1988) by way of consideration for the scheme transactions.
- (6) The effective date of the notional transaction is—
- (a) the last date of completion for the scheme transactions, or
 - (b) if earlier, the last date on which a contract in respect of the scheme transactions is substantially performed.
- (7) This section does not apply where subsection (1)(c) is satisfied only by reason of—
- (a) sections 71A to 73, or
 - (b) a provision of Schedule 9.

75B Anti-avoidance: incidental transactions

- (1) In calculating the chargeable consideration on the notional transaction for the purposes of section 75A(5), consideration for a transaction shall be ignored if or in so far as the transaction is merely incidental to the transfer of the chargeable interest from V to P.
- (2) A transaction is not incidental to the transfer of the chargeable interest from V to P—
- (a) if or in so far as it forms part of a process, or series of transactions, by which the transfer is effected,
 - (b) if the transfer of the chargeable interest is conditional on the completion of the transaction, or
 - (c) if it is of a kind specified in section 75A(3).

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- (3) A transaction may, in particular, be incidental if or in so far as it is undertaken only for a purpose relating to—
 - (a) the construction of a building on property to which the chargeable interest relates,
 - (b) the sale or supply of anything other than land, or
 - (c) a loan to P secured by a mortgage, or any other provision of finance to enable P, or another person, to pay for part of a process, or series of transactions, by which the chargeable interest transfers from V to P.
- (4) In subsection (3)—
 - (a) paragraph (a) is subject to subsection (2)(a) to (c),
 - (b) paragraph (b) is subject to subsection (2)(a) and (c), and
 - (c) paragraph (c) is subject to subsection (2)(a) to (c).
- (5) The exclusion required by subsection (1) shall be effected by way of just and reasonable apportionment if necessary.
- (6) In this section a reference to the transfer of a chargeable interest from V to P includes a reference to a disposal by V of an interest acquired by P.

75C Anti-avoidance: supplemental

- (1) A transfer of shares or securities shall be ignored for the purposes of section 75A if but for this subsection it would be the first of a series of scheme transactions.
- (2) The notional transaction under section 75A attracts any relief under this Part which it would attract if it were an actual transaction (subject to the terms and restrictions of the relief).
- (3) The notional transaction under section 75A is a land transaction entered into for the purposes of or in connection with the transfer of an undertaking or part for the purposes of paragraphs 7 and 8 of Schedule 7, if any of the scheme transactions is entered into for the purposes of or in connection with the transfer of the undertaking or part.
- (4) In the application of section 75A(5) no account shall be taken of any amount paid by way of consideration in respect of a transaction to which any of sections 60, 61, 63, 64, 65, 66, 67, 69, 71, 74 and 75, or a provision of Schedule 6A or 8, applies.
- (5) In the application of section 75A(5) an amount given or received partly in respect of the chargeable interest acquired by P and partly in respect of another chargeable interest shall be subjected to just and reasonable apportionment.
- (6) Section 53 applies to the notional transaction under section 75A.
- (7) Paragraph 5 of Schedule 4 applies to the notional transaction under section 75A.
- (8) For the purposes of section 75A—
 - (a) an interest in a property-investment partnership (within the meaning of paragraph 14 of Schedule 15) is a chargeable interest in so far as it concerns land owned by the partnership, and

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- (b) where V or P is a partnership, Part 3 of Schedule 15 applies to the notional transaction as to the transfer of a chargeable interest from or to a partnership.
- (9) For the purposes of section 75A a reference to an amount of consideration includes a reference to the value of consideration given as money's worth.
- (10) Stamp duty land tax paid in respect of a land transaction which is to be disregarded by virtue of section 75A(4)(a) is taken to have been paid in respect of the notional transaction by virtue of section 75A(4)(b).
- (11) The Treasury may by order provide for section 75A not to apply in specified circumstances.
- (12) An order under subsection (11) may include incidental, consequential or transitional provision and may make provision with retrospective effect.”
- (2) The amendment made by subsection (1) has effect in respect of disposals and acquisitions if the disposal mentioned in new section 75A(1)(a) (inserted by that subsection) takes place on or after 6th December 2006.
- (3) But—
 - (a) the transitional provisions of sub-paragraphs (2) to (5) of paragraph 1 of the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/3237) continue to have effect in relation to this section as in relation to that paragraph, and
 - (b) a provision of new section 75C (inserted by subsection (1) above) shall not have effect where the disposal mentioned in new section 75A(1)(a) took place before the day on which this Act is passed, if or in so far as the provision would make a person liable for a higher amount of tax than would have been charged in accordance with those regulations.

72 Partnerships

- (1) Schedule 15 to FA 2003 (stamp duty land tax: partnerships) is amended as follows.
- (2) A reference in this section to a provision of that Schedule is to the provision as it had effect before variation by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006.
- (3) In Step Two of paragraph 12(1) (transfer to partnership: how to calculate the “sum of the lower proportions”)—
 - (a) in paragraph (b), for “or is connected with the relevant owner” substitute “ or is an individual connected with the relevant owner ”, and
 - (b) insert at the end— “ (If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.) ”
- (4) In paragraph 12, after sub-paragraph (2) insert—
 - “(3) For the purpose of paragraph (b) of Step 2 a company is to be treated as an individual connected with the relevant owner in so far as it—
 - (a) holds property as trustee, and
 - (b) is connected with the relevant owner only because of section 839(3) of the Taxes Act 1988.”

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- (5) Omit paragraph 13 (transfer to partnership where all partners are companies).
- (6) In paragraph 14 (transfer of interest in property-investment partnership)—
- (a) omit sub-paragraphs (1)(b) and (4), and
 - (b) insert at the end—
 - “(9) An interest in respect of the transfer of which this paragraph applies shall be treated as a chargeable interest for the purposes of paragraph 3(1) of Schedule 7 to the extent that the relevant partnership property consists of a chargeable interest.”,
- and in the italic cross-heading before it, omit “*for consideration*”.
- (7) In Step Two of paragraph 20(1) (transfer from partnership: how to calculate the “sum of the lower proportions”)—
- (a) in paragraph (b), for “or was connected with the relevant owner” substitute “or was an individual connected with the relevant owner”, and
 - (b) insert at the end— “(If there is no relevant owner with a corresponding partner, the sum of the lower proportions is nil.)”
- (8) In paragraph 20, after sub-paragraph (2) insert—
- “(3) For the purpose of paragraph (b) of Step 2 a company is to be treated as an individual connected with the relevant owner in so far as it—
 - (a) holds property as trustee, and
 - (b) is connected with the relevant owner only because of section 839(3) of the Taxes Act 1988.”
- (9) After paragraph 27 insert—
- “^{27A}
- (1) This paragraph applies where in calculating the sum of the lower proportions in relation to a transaction (in accordance with paragraph 12)—
 - (a) a company (“the connected company”) would have been a corresponding partner of a relevant owner (“the original owner”) but for the fact that paragraph (b) of Step Two includes connected persons only if they are individuals, and
 - (b) the connected company and the original owner are members of the same group.
 - (2) The charge in respect of the transaction shall be reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purposes of calculating the sum of the lower proportions.
 - (3) The provisions of Part 1 of Schedule 7 apply to group relief under sub-paragraph (2) above as to group relief under paragraph 1(1) of Schedule 7, but—
 - (a) with the omission of paragraph 2(2)(a),
 - (b) with the substitution for “the purchaser” in paragraph 3(1)(a) of “a partner who was, at the effective date of the transaction, a partner and a member of the same group as the transferor (“the relevant partner”)”, and

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- (c) with the other modifications specified in paragraph 27(3) to (6) above.”
- (10) For paragraph 36 substitute—
- “36 For the purposes of this Part of this Schedule, where a person acquires or increases a partnership share there is a transfer of an interest in the partnership (to that partner and from the other partners).”
- (11) In paragraph 39 (“connected persons”), insert at the end—
- “(3) As applied by sub-paragraph (1) for the purposes of paragraph 12 or 20, that section has effect with the omission of subsection (3)(c) (trustee connected with settlement).”
- (12) In Schedule 16 to FA 2003 (trusts and powers)—
- (a) in paragraph 3(1) (bare trust), after “a chargeable interest” insert “ or an interest in a partnership ”, and
 - (b) in paragraph 4 (trustees of settlement), after “a chargeable interest” insert “ or an interest in a partnership ”.
- (13) The amendments made by subsections (1) to (11) have effect in respect of transfers occurring on or after the day on which this Act is passed.
- (14) But the amendments made by subsections (6) and (10) do not have effect in respect of anything done in respect of a property-investment partnership established before the day on which this Act is passed if—
- (a) the partnership does not acquire a chargeable interest on or after that day, and
 - (b) stamp duty land tax was paid in respect of each chargeable interest acquired before that day, by reference to chargeable consideration of not less than the market value.
- (15) The amendment made by subsection (12) has effect in respect of acquisitions occurring on or after the day on which this Act is passed.
- (16) An amendment made by this section replaces, to the extent provided for by subsections (13) to (15), any variation made by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/3237).
- (17) Despite subsections (13) to (16), the transitional provisions of sub-paragraphs (8) to (10) of paragraph 2 of the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (S.I. 2006/3237) continue to have effect in relation to the amendments made by this section as in relation to that paragraph.

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