
STATUTORY INSTRUMENTS

2004 No. 1363

The Stamp Duty Land Tax (Appeals) Regulations 2004

PART 2

Appeals, Jurisdiction and Other Matters

Appeals to General Commissioners

3.—(1) Appeals shall be to the General Commissioners, subject to—

- (a) regulation 4 (appeals to Special Commissioners),
- (b) regulation 6 (questions to be determined by the relevant Lands Tribunal), and
- (c) any other provision in any of the enactments relating to stamp duty land tax which provide for an appeal to be brought to the Special Commissioners to the exclusion of the General Commissioners.

(2) Paragraph (1) has effect subject also to any election under regulation 5 (election to bring an appeal before Special Commissioners).

Appeals to Special Commissioners

4.—(1) Unless the Special Commissioners otherwise direct, an appeal under paragraph 35(1) of Schedule 10 shall be to the Special Commissioners if—

- (a) the appeal relates to an assessment in relation to which notice of enquiry has been given under paragraph 12 of Schedule 10; and
- (b) notice has been given referring any question arising in connection with the subject matter of the enquiry to the Special Commissioners under—

(i) paragraph 19 of Schedule 10; or

(ii) paragraph 12 of Schedule 11;

even if the notice of referral was subsequently withdrawn.

(2) An appeal under paragraph 35(1) of Schedule 10 against a revenue assessment made by the Board under Part 5 of Schedule 10 shall be to the Special Commissioners.

Appeals: election to bring an appeal before Special Commissioners

5.—(1) The appellant may elect to bring before the Special Commissioners any appeal that would otherwise be to the General Commissioners under regulation 3(1).

(2) Any such election shall be exercised by notice together with the notice of appeal, or by a separate notice in writing to the Inland Revenue (as appropriate) within the time for bringing the proceedings, and if no such notice of election is given the appeal shall be brought before the General Commissioners.

(3) Any such election shall be disregarded if—

- (a) the appellant and the Inland Revenue agree in writing, at any time before the determination of the appeal, that it is to be disregarded, or
 - (b) the General Commissioners have given a direction under paragraph (6) below and have not revoked it.
- (4) Where an election has been made under paragraph (1), the Inland Revenue may refer the election to the General Commissioners.
- (5) A reference under paragraph (4) above must be made—
- (a) after giving notice to the appellant, and
 - (b) before the determination of the appeal in respect of which the election has been made.
- (6) On a reference under paragraph (4) the Commissioners shall, unless they are satisfied that the appellant has arguments to present or evidence to adduce on the merits of the appeal, direct that the election be disregarded.
- (7) If at any time after giving a direction under paragraph (6) (but before the determination of the appeal) the General Commissioners are satisfied that the appellant has arguments to present or evidence to adduce on the merits of the appeal, they shall revoke the direction.
- (8) A decision to give or revoke a direction under paragraphs (6) or (7) respectively shall be final.

Questions to be determined by the relevant Lands Tribunal

- 6.—(1) Where the question in dispute on any appeal under paragraphs 34(6) or 35(1) of Schedule 10 is a question of the market value of the subject matter of the land transaction that question shall be determined on a reference by the relevant Lands Tribunal.
- (2) In this regulation “the relevant Lands Tribunal” means—
- (a) where the land is in England and Wales, the Lands Tribunal;
 - (b) where the land is in Scotland, the Lands Tribunal for Scotland;
 - (c) where the land is in Northern Ireland, the Lands Tribunal for Northern Ireland.

Assigning Proceedings to General Commissioners

- 7.—(1) In this regulation and regulations 8 to 13 and 15—
- “proceedings” means as appropriate—
- (a) any appeal; and
 - (b) proceedings under—
 - (i) section 82(4);
 - (ii) paragraphs 5 and 24 of Schedule 10; and
 - (iii) regulations 19 and 22 of the Stamp Duty Land Tax (Administration) Regulations 2003(1);
- “division” means the division of General Commissioners before whom the proceedings will be heard.
- (2) Any proceedings, which are to be heard by any General Commissioners, shall, subject to regulations 8 to 13, be brought before the division which covers the place where the subject matter of the land transaction is situated.

Assignment to General Commissioners: purchaser's election for place of business or residence

8.—(1) For the purposes of regulations 8 to 11 and 13—

“company’s place of business” where the purchaser is a company, means either the place where, at the time when the election is made, the company carries on its trade or business, or the place where, at that time, the company’s head office is situated;

“place of business” where the purchaser is an individual, means the place where the individual’s trade, profession, vocation or business is carried on;

“place of residence” where the purchaser is an individual, means an individual’s usual place of residence;

“partnership’s place of business” where the purchaser is a partnership, means the place where, at the time when the election is made, the partnership carries on or mainly carries on (if at more than one place) its trade, profession or business.

(2) A purchaser may elect to have any proceedings which are to be heard by any General Commissioners brought before the division which covers the area within which—

- (a) his place of residence (where the purchaser is an individual);
- (b) his place of business (if any) (where the purchaser is an individual);
- (c) the company’s place of business (where the purchaser is a company); or
- (d) the partnership’s place of business (where the purchaser is a partnership);

is situated.

Assignment to General Commissioners: purchaser's election in linked transactions

9. Where—

- (a) there are two or more linked transactions with the same effective date; and
- (b) a single land transaction return; and
- (c) there is more than one division which covers the places where the subject matters of the land transaction are situated,

then, a purchaser may elect to have any proceedings which are to be heard by any General Commissioners brought before the division which covers any one of—

- (i) the addresses of the subject matters of the land transaction; or
- (ii) the places referred to in regulation 8(2).

Assignment to General Commissioners: purchaser's election where one transaction and more than one division

10. Where one or more divisions covers the place where the subject matter of a land transaction is situated, then a purchaser may elect to have any proceedings which are to be heard by any General Commissioners brought before—

- (a) any one of those divisions; or
- (b) the division which covers one of the places specified in regulation 8(2).

Assignment to General Commissioners: further returns under section 81

11.—(1) Any proceedings which are to be heard by any General Commissioners relating to a return under section 81 shall be brought before the division, which covers the place where the subject matter of the land transaction for which relief has been withdrawn pursuant to section 81 is situated.

(2) The provisions of regulation 8 and regulation 14 shall apply for the purpose of this regulation in relation to these proceedings as they apply to the proceedings to which the provisions of those regulations apply.

Assignment to General Commissioners by agreement

12. Notwithstanding the provisions of regulations 7 to 11—

- (a) where the parties to any proceedings which are to be heard by any General Commissioners have agreed, whether before or after the institution of those proceedings, that the proceedings shall be brought before the General Commissioners for a division specified in the agreement; and
- (b) in the case of an agreement made before the time of the institution of the proceedings, neither party has determined that agreement by a notice in writing served on the other party before that time,

the proceedings shall be brought before the General Commissioners for the division so specified.

Assigning proceedings commenced by the Inland Revenue to General Commissioners

13. Where any proceedings which are to be heard by any General Commissioners are commenced by the Inland Revenue, the Inland Revenue shall elect to have those proceedings heard by the division which covers—

- (a) either the place referred to in regulation 7(2); or
- (b) one of the places referred to in regulation 8.

Assignment to General Commissioners: Notice of election

14.—(1) An election by a purchaser under the provisions of regulations 8, 9, 10 or 11(2) shall be made by notice in writing to the Inland Revenue, and the time limit for the making of such an election is—

- (a) the time when the purchaser gives notice of appeal, or as appropriate, otherwise commences the proceedings; or
 - (b) such later date as the Board allows.
- (2) Such an election shall be irrevocable.

(3) An election by the Inland Revenue under regulation 13 shall be made by notice in writing and served on the purchaser.

Directions by the Board

15.—(1) The Board may give a direction in relation to any proceedings which are to be heard by any General Commissioners that, notwithstanding the provisions of regulations 8, 9, 10 or 11(2), those proceedings shall be heard by the division specified in the direction where—

- (a) there is more than one purchaser; and
- (b) the purchasers elect different divisions; or
- (c) where the purchaser or one of them fails to exercise their right to elect under regulations 9,10 or 11(2);

provided that the division specified in that direction covers either—

- (i) the place where the subject matter of the land transaction is situated; or
- (ii) one of the places referred to in regulation 8.

(2) A direction given under paragraph (1) shall not have effect in relation to such proceedings unless the Inland Revenue has served on all the purchasers a notice in writing stating the effect of the direction.

Transfer of appeals where there is a right of election

16. In any appeal to which regulation 5 applies, the Commissioners before whom the proceedings are to be brought or have been brought may, if they think fit, on an application made by the parties to the appeal, arrange with the other Commissioners concerned for the transfer of that appeal to those other Commissioners, and the appeal may be so transferred notwithstanding that the election has been exercised, or that the time for exercising the election has expired without it being exercised.

Transfer of complex or lengthy appeals to Special Commissioners

- 17.** Where in any case (including cases to which regulation 16 applies)—
- (a) an appeal has been brought before the General Commissioners; and
 - (b) those Commissioners consider that, because of the complexity of the appeal or the length of time likely to be required for hearing it, the appeal should be brought before the Special Commissioners;

the General Commissioners may, with the agreement of the Special Commissioners, and having considered any representations made to them by the parties, arrange for the transfer of the appeal to the Special Commissioners.

Determinations of General Commissioners

18. No determination of any General Commissioners in any proceedings under the enactments relating to stamp duty land tax shall be questioned, whether by case stated under section 56 of the Taxes Management Act 1970(2) as applied as modified by these regulations or otherwise, on the ground that these regulations did not authorise those General Commissioners to make the determination, except by a party by whom or on whose behalf an objection to the jurisdiction was made to those General Commissioners before or in the course of proceedings leading to the determination.

Shares or securities valuations to be determined by Special Commissioners

- 19.** Insofar as the question in dispute in any appeal—
- (a) is a question of the value of shares or securities in a company resident in the UK, other than shares or securities quoted in the Stock Exchange Daily Official List; and
 - (b) those shares or securities are given as chargeable consideration for a land transaction; then that question shall be determined by the Special Commissioners.

Quorum of General Commissioners

20. Subject to the provisions of paragraphs 2(1), 7(1), 9(2), 24(3) or 53(3)(a) of Schedule 13, anything to be done by the General Commissioners may be done by any two or more General Commissioners.

(2) Section 56 was amended by regulation 2 of and paragraphs 10(a), (b), (c) and (d) of Schedule 1 to and Part I of Schedule 2 to the General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I.1994/1813) and section 127 of the Finance Act 1984 (c. 43) and section 156 of the Finance Act 1989 (c. 26) and sections 44(7) and 45(3) of the Finance (No.2) Act 1975 (c. 45) and section 41 of and paragraph 15 of Schedule 8 to the Development Land Tax Act 1976 (c. 40) and section 98(6) of and Part X of Schedule 27 to the Finance Act 1985 (c. 54).

Determinations of Commissioners

21. Save as otherwise provided in—

- (a) the Taxes Management Act 1970 as applied as modified through these regulations, or otherwise; or
- (b) the enactments relating to stamp duty land tax;

the determination of the Commissioners in relation to any proceedings under the enactments relating to stamp duty land tax shall be final and conclusive.

Assessments and self-assessments

22.—(1) In this regulation any reference to an appeal means an appeal under paragraphs 33(4), or 35(1) of Schedule 10.

(2) If on an appeal it appears to the majority of the Commissioners present at the hearing, by examination of the appellant on oath or affirmation, or by other evidence—

- (a) that the appellant is overcharged by a self-assessment; or
- (b) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment shall be reduced accordingly, but otherwise the assessment shall stand good.

(3) If, on an appeal it appears to the Commissioners—

- (a) that the appellant is undercharged to stamp duty land tax by a self-assessment; or
- (b) that the appellant is undercharged by an assessment other than a self-assessment,

the assessment shall be increased accordingly.

(4) Where, on an appeal against an assessment other than a self-assessment which—

- (a) assesses an amount which is chargeable to stamp duty land tax, and
- (b) charges stamp duty land tax on the amount assessed,

it appears to the Commissioners as mentioned in paragraphs (2) or (3) above, they may, unless the circumstances of the case otherwise require, reduce or, as the case may be, increase only the amount assessed; and where an appeal is so determined the stamp duty land tax charged by the assessment shall be taken to have been reduced or increased accordingly.