

December 2006

Property Tax

Pre-Budget Report 2006 - SDLT Changes

The Government has moved very quickly to block with immediate effect a number of stamp duty land tax schemes, principally involving the use of partnerships, but has also taken the opportunity to introduce a wide ranging anti-avoidance measure which may have a significant effect on less aggressive or even wholly innocent property structures.

Partnership Planning

There were a number of SDLT schemes being used which relied on exploiting the SDLT regime for partnerships - whether sellers hiving down into partnerships or buyers sub-selling property into partnerships. These have now been blocked with immediate effect (unless effected pursuant to pre 2pm 6 December contracts).

The relevant changes will apply to all property holding partnerships, even if not set up for SDLT planning purposes and in broad terms will:

- only allow groups to obtain a relief from SDLT on transfers into wholly owned partnerships (including LPs and LLPs) where the conditions for group relief are satisfied. Accordingly there must be no arrangements to sell any group partner and the transfer must be bona fide and not for the avoidance of SDLT, income tax, corporation tax or CGT. Further any sale of a group partner in three years will trigger a clawback
- cause SDLT charges to arise on transferring property out of group partnerships to group members, but in this case no group relief will be available.

General Anti-Avoidance

An extremely wide general anti-avoidance measure has also been introduced with immediate effect (again, unless there is a pre 2pm 6 December contract). This will stop current schemes such as combining sub-sale relief with distributions in specie, and lease variation structures. However it is likely to have a wider effect.

In brief the new provision applies where:

- there is a disposal of land by Vendor and Purchaser acquires it (or an interest in it)

- there are a number of connected or 'scheme' transactions
- the total SDLT payable is less than would have been payable had Vendor sold directly to Purchaser.

If these conditions are met then SDLT is imposed as if there was a straight sale of the property for the highest consideration paid under any of the scheme transactions.

There is no purpose test for the application of this provision, only that the other transactions must be 'connected'. As with the wide SDLT Disclosure Regulations, the provision is therefore likely to catch innocent or normal transactions. It would be surprising if HMRC intended taxpayers always to pay the maximum conceivable tax that could be due. In the case of the Disclosure Regulations HMRC sought to allay fears of excessively wide legislation not by amending the legislation but by introducing a 'white list' of excluded circumstances. Such a move must at the very least be necessary in respect of this new measure to allow taxpayers to know their tax liability.

What should you do now:

- review all current structures as a matter of urgency;
- take care with structures which result in less SDLT than might have been payable on a direct property transfer;
- review all arrangements uncompleted as at 6 December 2006 - even where the first steps in the structure have already been taken, the transitional rules may not protect the structure as a whole, and certain subsequent actions may jeopardise the protection of those rules for all steps.

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This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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