

EXPLANATORY NOTE

CLAUSE 42: THE TAX

SUMMARY

1. This clause introduces stamp duty land tax as the replacement for the current stamp duty charge on land and buildings in the UK. It clarifies that the revised regime will apply irrespective of how the transaction is documented (if at all) and whether the deal is concluded in the UK or elsewhere.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for this Part to deal with a tax to be known as stamp duty land tax on land transactions (defined in clause 43).

3. Subsection (2) clarifies that the tax is chargeable whether or not there is an instrument effecting the transaction (that is whether or not it is made under a legal document, paper or electronic), and irrespective of where or how the transaction is effected.

4. Subsection (3) provides that stamp duty land tax will be under the care and management of the Inland Revenue.

BACKGROUND

5. Stamp duty land tax, a charge on transactions, is designed to replace the current stamp duty on land and buildings, a charge on instruments or documents. The tax will come into effect from an appointed day which, the Chancellor has announced, is planned to be 1 December 2003.

6. The necessary legislation is set out in Part 4 of the Bill, and this clause introduces that Part.

7. Consultation on the reform of stamp duty on land was launched in the 2002 Budget, with the Inland Revenue's consultation document "Modernising Stamp Duty on land and buildings in the UK" (April 2002). Selected draft clauses were published at the time of the Chancellor's pre-budget report in November 2002.

8. Stamp duty is over three hundred years old and the legislation was last consolidated in 1891. It is a charge on documents that transfer property, and when duty is paid, stamps are still impressed physically on the document concerned. Unlike more modern taxes there is no provision for the tax to be collected directly from taxpayers by assessment. The main sanction for failure to pay is that the document cannot be registered with the land registries, or used in evidence in court proceedings.

9. A main driver for reform has been the increased use of avoidance devices to mitigate the charge to stamp duty. The Government is committed to preventing avoidance and the new legislation is designed to ensure all purchasers of property pay their fair share of tax.

10. This Part provides modern legislation for a transaction tax on land transfers. It also modernises compliance powers and appeal rights, bringing them into line with the self-assessment schemes for income tax and corporation tax in TMA and Schedule 18 to the Finance Act 1998.

11. Stamp duty land tax will follow stamp duty by being under the care and management of the Inland Revenue.

EXPLANATORY NOTE

CLAUSE 43: LAND TRANSACTIONS

SUMMARY

1. This clause sets out the definitions of “land transaction”, “vendor”, “purchaser” and “main subject-matter” which are used for the purposes of stamp duty land tax.

DETAILS OF THE CLAUSE

2. Subsection (1) defines a “land transaction” as any acquisition of a chargeable interest. Chargeable interest is defined in clause 48

3. Subsection (2) clarifies that the stamp duty land tax regime applies however the acquisition is effected, and thus includes transactions arising from a court order or by operation of law.

4. Subsection (3) analyses various categories of land transactions in terms of disposals by one party and acquisitions by the other. This clarifies that the creation, surrender, release or variation of a chargeable interest constitutes an acquisition. It thus assists with the definitions of “vendor” and “purchaser” in subsection (4).

5. Subsection (4) defines “purchaser” as the person acquiring the subject-matter of the transaction, and “vendor” as the person disposing of the subject-matter of the transaction. This applies whether or not there is consideration for the transaction.

6. Subsection (5) limits the definition of “purchaser” to a person who is either a party to the transaction or has provided consideration.

7. Subsection (6) defines the subject-matter of a land transaction to include the chargeable interest acquired (“the main subject-matter”) and any interest or right appurtenant or pertaining to it. This is to prevent, say, the transfer of a freehold and a related right of way as having to be dealt with as two separate transactions.

BACKGROUND

8. This clause is fundamental in setting the broad definition of a land transaction as the creation, transfer, surrender, release or variation of any interest in land in the UK.

9. The “purchaser” is the person who is obliged under this Part to fulfil any reporting requirements and pay any tax due.

10. Broadly, the practical impact of this clause is that:

- for conveyances, assignments or assignations, the purchaser is the transferee or assignee,
- for the grant of a lease, the purchaser is the lessee or tenant,
- for the grant of an easement, servitude or profit à prendre, the purchaser is the person who becomes entitled to the right,
- for the surrender of a lease, the purchaser is the landlord,
- for variations, the purchaser is the person whose estate, interest or right is benefited or enlarged, and
- for the making or release of a covenant or condition, the purchaser is the person whose estate, interest or right is benefited or enlarged.

EXPLANATORY NOTE

CLAUSE 44: CONTRACT AND CONVEYANCE

SUMMARY

1. This clause relates to contracts for land transactions. If such a contract is “substantially performed” before it is formally completed, then a charge to stamp duty land tax will arise at the time of substantial performance (defined broadly as payment of most of the consideration or taking possession of the property). If such a contract is “substantially performed” only at the time it is formally completed, then a charge to stamp duty land tax will arise at the time of completion.

DETAILS OF THE CLAUSE

2. Subsection (1) applies the clause where a contract for a land transaction is entered into which is to be completed by a conveyance. “Completion”, “contract” and “conveyance” are defined in subsection (9).

3. Subsection (2) provides that if such a contract is “substantially performed” only at the time it is formally completed, then the contract and conveyance comprise a single land transaction. In this case, the effective date for purposes of stamp duty land tax would be the date of completion.

4. Subsection (3) provides that if the transaction is substantially performed before it is formally completed (or if it is substantially performed but never completed), then the contract and any subsequent completion are treated as two separate land transactions. In this case, the effective date of the contract for the purposes of stamp duty land tax would be the date of substantial performance.

5. Subsection (4) defines what is meant by substantially performed. This is where either the purchaser takes possession of the whole or substantially the whole of the subject-matter of the transaction, or where “a substantial amount of the consideration” is paid or provided. Whichever event happens first will trigger the charge. The terminology used in this subsection is elaborated in subsections (5) and (6).

6. Subsection (5) confirms that a purchaser takes possession if he receives or is entitled to receive rents and profits, and that (notwithstanding clause 48 subsection (2)(b)) this clause applies whether the right to possession is documented in the contract, or by a licence or lease.

7. Subsection (6) sets out when a substantial amount of the consideration is paid or provided:

- if none of the consideration is rent, it is when the whole or substantially the whole of the consideration passes.
- if the only consideration is rent, it is when the first payment of rent is made.
- if the consideration is partly rent and partly other consideration, it is when the whole or substantially the whole of the consideration passes, or when the first payment of rent is made. Whichever happens earlier will trigger the charge.

8. Subsection (7)(a) clarifies that, where a contract is substantially performed before completion, both the substantial performance and any later completion of the same transaction should be notified to the Inland Revenue. Subsection (7)(b) provides that stamp duty land tax is only due on completion to the extent that the tax due on the completion exceeds that due on the contract.

9. Subsection (8) provides for all or some of the tax to be repaid if the contract is rescinded, annulled or otherwise not carried into effect, either wholly or partially. Repayment must be claimed by amending the land transaction return submitted in relation to the contract.

10. Subsection (9) defines “completion” “contract” and “conveyance” for the purposes of this clause. Conveyance includes any instrument, whether in written or electronic form. This would include a lease.

BACKGROUND

This clause ensures that, in the majority of cases, stamp duty land tax will arise on completion. But it is also designed to prevent avoidance or postponement of tax by the technique of “resting on contract”. In such cases the clause ensures that a transaction is only charged to stamp duty land tax once.

11. In every case, whether the contract has been substantially performed or not, will be a question of fact. An example of a contract being substantially performed in advance of completion is where the purchaser has paid substantially all of the consideration specified in the contract. Or where the purchaser obtains “the keys to the door” and is entitled to occupy the property (however this is documented). Or when the purchaser of a building that is let becomes entitled to receive the rents.

12. This clause applies even if the contract is conditional (e.g. when an assignee of a lease is allowed into occupation pending receipt of the landlord’s consent

to the assignment). If the condition is not satisfied, then the stamp duty land tax paid can be reclaimed. A reclaim is also possible if the contract is rescinded or annulled.

EXPLANATORY NOTE

**CLAUSE 45: CONTRACT AND CONVEYANCE: EFFECT OF
TRANSFER OF RIGHTS**

SUMMARY

1. This clause deals with the treatment of subsales and other situations where the purchaser's rights under a contract are transferred to a third party. The basic rule is that each transfer of rights will be charged to stamp duty land tax. The Government will be consulting on possible targeted replacements for the subsale relief that existed under stamp duty.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that this clause 45 applies where the parties enter into a contract for land transaction and, before it is completed, there is a subsale, assignment or other transaction which results in a third party being entitled to acquire all or part of the land at completion (defined as a transfer of rights).

3. Subsection (2) and (3) confirm that each transfer of rights is treated as if it were a separate contract for a land transaction to which clause 44 applied as if:

- the transferee of the rights is the purchaser,
- the chargeable consideration is the amount that is still to be paid under the original contract plus the amount of consideration given for the transfer of rights,

4. This does not affect the operation of clause 44 in relation to the original contract on the basis that "completion" as defined in subsection (9)(a) of that clause includes completion by a conveyance to the transferee of the rights.

5. Subsection (4) confirms that, where there are successive transfers of rights, subsection (3) applies to each of them. This does not affect the operation of clause 44 in relation to the previous transfers of rights on the basis that "completion" as defined in subsection (9)(a) of that clause includes completion by a conveyance to the subsequent transferee of the rights.

6. Subsection (5) deals with the case where the transfer of rights relates to part only of the subject-matter of the original contract. When calculating how much of the stamp duty land tax payable on the transfer of rights may be off-set against the stamp duty land tax payable on the eventual conveyance (see

subsection (7) of clause 44), the original price is to be apportioned appropriately.

7. Subsection (6) defines “assignment”, “contract” and “conveyance” for the purposes of clause 45. Conveyance includes any instrument, whether in written or electronic form. This would include a lease.

BACKGROUND

8. One result of the operation of this clause is that there will no longer be a general relief on subsales. But the Government will be consulting on possible targeted replacements.

9. To give an example: A enters into a contract to buy land from B for £100,000. B pays A a deposit of £10,000. B then transfers his rights under that contract to C for £20,000. On completion, B requires A to transfer the land directly to C. This is a 'transfer of rights' within clause 45(1). The legal effect of the conveyance from A to C is to give effect to both the contracts. For stamp duty land tax purposes the conveyance will complete the original contract (by virtue of the wording in 45(3)). It will also complete the second contract, the transfer of rights, which is deemed to be a contract for a land transaction having the terms set out in clause 45(3). Clause 44(2) therefore applies to treat each contract and the conveyance as part of a single land transaction. B will pay stamp duty land tax under clause 44 on the chargeable consideration payable under the first contract, £100,000. C will pay stamp duty land tax under clause 45 on the consideration for the transfer of rights, £20,000 (because clause 45 (3)(b)(ii) will apply) and on the amount of consideration outstanding under the original contract, £90,000 (because clause 45 (3)(b)(i) will apply). No additional duty will be payable on the conveyance.

EXPLANATORY NOTE

CLAUSE 46: OPTIONS AND RIGHTS OF PRE-EMPTION

SUMMARY

1. This clause deals with the treatment of options and rights of pre-emption (i.e. rights of first refusal) for stamp duty land tax.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for a charge on the acquisition of options or rights of pre-emption over land transactions. Where such an option or right is exercised, the transaction that arises as a consequence is a distinct (although probably linked) transaction and chargeable to stamp duty land tax in its own right.
3. Subsection (2) confirms that options fall within subsection (1) even if the grantor can discharge his obligation either by entering into a land transaction or in some other way (e.g. payment of money).
4. Subsection (3) confirms that the effective date in relation to options and rights of pre-emption is when they are acquired, not when they become exercisable.
5. Subsection (4) confirms that if an option or right of pre-emption is chargeable as a land transaction in its own right, or because it is part of a wider transaction, then it is dealt with as such, rather than dealt with under this clause.

BACKGROUND

6. This is intended to prevent avoidance. At present although option agreements are theoretically stampable, many are not stamped in practice. Stamp duty can therefore be reduced by artificially increasing the option fee and decreasing that price of the land.

EXPLANATORY NOTE

CLAUSE 47: EXCHANGES

SUMMARY

1. This clause provides that where parties enter into transactions that involve exchanges of land, then they are treated for stamp duty land tax as if they had entered into two separate land transactions.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the basic principle for the treatment of a land transaction that is entered into in consideration of another land transaction. The exchange should be treated as two separate transactions, each giving rise to a tax charge. This applies whether the purchaser/vendor is acting alone or jointly.
3. Subsection (2) states that this clause applies equally where a land transaction under which a purchase is paid for wholly or partly by entering into a separate transaction as vendor.
4. Subsection (3) refers to the paragraphs in Schedule 4 which relate to exchanges and partitions. The subsection also refers to clause 58, which creates a special rule for part exchanges of residential property.

BACKGROUND

5. This clause states that where land is exchanged, each leg of the transaction counts as a separate transaction for the purposes of stamp duty land tax. The clause makes it clear that this rule applies regardless of how the exchange is structured; i.e. the single sale route previously recognised by the Inland Revenue will no longer be available. Detailed provisions as to the calculation of the chargeable consideration for such exchanges are set out in Schedule 4.

EXPLANATORY NOTE

CLAUSE 48: CHARGEABLE INTERESTS

SUMMARY

1. This clause defines chargeable interests, the acquisition of which constitutes a land transaction under clause 43.

DETAILS OF CLAUSE

2. Subsection (1) defines “chargeable interest” to mean any estate, interest, right, or power in or over land in the UK or the benefit of any obligation, restriction or condition affecting the value of such estate, interest, right, or power, other than exempt interests, which are defined in subsection (2).
3. Subsection (2) defines exempt interests as: (a) security interests (b) licences to use or occupy land, and (c) (in England and Wales or Northern Ireland) tenancies at will and advowsons, franchises and manors
4. Subsection (3) defines (a) “security interest” as an interest or right held to secure the payment of money or performance of an obligation. This does not include a rentcharge or the equivalent Scottish feu duties or payments, and (b) “franchises” as grants from the Crown such as a right to hold a market or fair or the right to take tolls.
5. Subsection (4) sets out the Scottish equivalent of rentcharges.
6. Subsection (5) gives the Treasury the right to pass regulations to bring any other interest or right within the definition of “exempt interest”
7. Subsection (6) provides that the regulations referred to in subsection (5) may include appropriate supplementary, incidental and transitional provisions.

BACKGROUND

8. The definition of “chargeable interest” includes freeholds and leaseholds (and their Scottish and Northern Irish equivalents), rights over another’s land,

and powers of appointment exercisable in the context of trusts of land. The benefit of restrictions and obligations that bind another's land is included only so far as it affects the value of the land.

9. The definition of "chargeable interest" includes legal (paper) interests and equitable (beneficial) interests. This means the acquisition of an equitable interest is within the scope of stamp duty land tax.

10. "Security interest" includes a mortgage,

11. The exemption of licences to occupy is for the avoidance of doubt, as a licence to occupy would not be an estate, interest or right over land in any event, merely a personal right. The usual rules to distinguish leases from licences will apply.

12. "Advowsons" are perpetual rights of presentation to an ecclesiastical living.

13. "Manors" are lordships of the manor being equitable estates in land and registrable at H. M. Land Registry.

EXPLANATORY NOTE

CLAUSE 49 AND SCHEDULE 3: CHARGEABLE TRANSACTIONS

SUMMARY

1. This clause defines “chargeable” land transactions as those that are not exempt. It also provides for Schedule 3 which provides for the exemption from stamp duty land tax of transactions not for chargeable consideration, certain leases granted by registered social landlords under agreements to house the homeless, transactions made in connection with the ending of a marriage, and transactions giving effect to certain dispositions following a death (and other related transactions). The Treasury has power to add further exempt transactions by regulation.

DETAILS OF THE CLAUSE

2. Subsection (1) defines “chargeable” land transactions as those that are not exempt.
3. Subsection (2) provides for Schedule 3

DETAILS OF THE SCHEDULE

4. Paragraph 1 exempts transactions for which there is no chargeable consideration. “Chargeable consideration” is defined in clause 50 and Schedule 4.
5. Paragraph 2 exempts from stamp duty land tax the grant of a lease where the lease is for an indefinite term or is terminable by notice of a month or less and is where the lease is granted by a registered social landlord to one or more individuals. The exemption only applies to arrangements entered into between the registered social landlord and a housing authority whereby the landlord provides accommodation for individuals nominated by the authority. Housing authority is defined, as is the type of accommodation that has been leased to the landlord for this purpose.
6. Paragraph 3 exempts from stamp duty land tax a transaction between one party to a marriage and the other where that transaction is made as a result of

certain types of court order (as specified) or an agreement between the spouses in contemplation or in connection to the dissolution or annulment of their marriage, their judicial separation or a separation order. This has the effect of exempting from stamp duty land tax certain transactions made in connection with the ending of a marriage

7. Paragraph 4 exempts from stamp duty land tax a transaction following a person's death that varies a disposition of property of which the deceased was competent to dispose. Paragraph 4 also specifies the conditions that must be satisfied for the exemption to be due. It also provides that this paragraph applies whether or not the administration of the estate is complete and whether or not the property has been distributed in accordance with the original dispositions.

8. Paragraph 5 empowers the Treasury to make regulations adding other land transactions to the list of those which are exempt. These regulations may contain appropriate supplementary, incidental and transitional provisions.

BACKGROUND

9. Chargeable transactions will usually give rise to a charge. This is unless, for example, they are for consideration below the charging threshold (proposed to be £60,000 for residential land and £150,000 for non-residential or mixed-use land – see clause 55).

10. Schedule 3 sets out certain transactions which are exempt from charge. Other transactions that are exempt or relieved from charge are set out or referred to in clauses 57 to 75 and Schedules 6 to 9.

11. Paragraph 1 of Schedule 4 exempts such transactions as gifts, testamentary dispositions, dispositions under the intestacy law, dispositions of property to beneficiaries under a trust in accordance with the terms of that trust and most acquisitions by operation of law.

12. Many registered social landlords enter into tenancy agreements to house homeless families. These agreements arise under arrangements with housing authorities to house the homeless. Paragraph 2 exempts the tenancy agreements from stamp duty land tax to encourage social landlords to enter into such arrangements.

**BOARD OF INLAND REVENUE
RESOLUTION 20**

**FINANCE BILL 2003
CLAUSE 49
SCHEDULE 3**

13. Paragraph 3 is based on section 83(1) Finance Act 1985, which is reflected in category H of the Schedule to the Stamp Duty (Exempt Instrument) Regulations, SI 1987/516.

14. Paragraph 4 draws on exemptions dealt with by categories B, C, D, E and M of the Schedule to the Stamp Duty (Exempt Instrument) Regulations, SI 1987/516.

EXPLANATORY NOTE

CLAUSE 50 AND SCHEDULE 4: CHARGEABLE CONSIDERATION

SUMMARY

1. This clause and schedule provide rules for determining the chargeable consideration for a transaction. Broadly consideration for the purposes of stamp duty land tax comprises anything given for the transaction that is money or has money's worth. This includes the release or assumption of a debt, works and services and the transfer of other property.

DETAILS OF THE CLAUSE

2. Subsection (1) introduces the Schedule.
3. Subsections (2) and (3) provides a regulatory power for the Treasury to amend the definition of chargeable consideration with respect to what is to count as chargeable consideration and as to how chargeable consideration should be calculated in specific cases. Such regulations would be governed by the negative resolution procedure as set out in clause 114.

DETAILS OF THE SCHEDULE

4. Paragraph 1 defines the chargeable consideration for the transaction to be any consideration given in money or money's worth for the subject-matter of the transaction, directly or indirectly by the purchaser or a connected party.
5. Paragraph 2 clarifies that any VAT due on the consideration is included as chargeable consideration. But where, particularly for a new lease, the vendor has the option to charge VAT, but has not actually made an election to do so by the effective date of the transaction, then any VAT that subsequently becomes payable does not count as chargeable consideration.
6. Paragraph 3 ensures that, where some or all of the consideration is to be paid at a later date, it is the amount agreed that comprises chargeable consideration, and no discount is available for the delay in payment.

7. Paragraph 4 provides for just and reasonable apportionment of consideration where the subject-matter of a transaction does not just consist of a chargeable interest or where the transaction is part of a bargain including other transactions.

8. Paragraph 5 sets out how the chargeable consideration for each transaction will be calculated when land transactions are entered into as consideration for each other. The rule will depend on whether the subject-matter of any of the transactions is a major interest in land as defined in clause 117. If this is the case, the chargeable consideration for each acquisition will be deemed to be the market value of the subject-matter of the transaction together with the rent, if the subject-matter is the grant of a new lease. If the subject-matter of all the transactions are minor interests then the values of the interests being exchanged are disregarded but any other chargeable consideration will remain liable to tax.

9. Paragraph 6 provides that where land is partitioned, the share of that land held by the purchaser immediately before the partition does not comprise chargeable consideration.

10. Paragraph 7 provides a general rule that any non-monetary consideration is to be valued at its market value, unless provided otherwise. Non-monetary consideration comprises all consideration except money and debt.

11. Paragraph 8 ensures that the assumption or release of debt by the purchaser counts as chargeable consideration for a transaction, but that the amount so chargeable cannot exceed the market value of the subject-matter of the transaction. The assumption of debt for the purposes of this clause does not include any mortgage or similar security taken out in order to acquire the property.

12. Paragraph 9 provides for consideration in a foreign currency to be translated into sterling on the effective date of the transaction (unless the parties use a different rate for the purposes of the transaction).

13. Paragraph 10 sets out how to calculate chargeable consideration where the purchaser carries out works of construction, improvement or repair of a building or other structure. Where those works are carried out after the effective date on land acquired or to be acquired by the purchaser under the transaction (or on any of the purchaser's other land) and it is not a condition of the transaction that the vendor carry them out on the purchaser's behalf, then the works do not comprise chargeable consideration. In other cases they do, at their open market value.

14. Paragraph 11 sets out that where the purchaser provides services (other than works of construction, improvement or repair of a building or other

structure), the chargeable consideration is the open market value of those services.

15. Paragraph 12 deals with the situation where the “vendor” is an employer and the “purchaser” his employee. Where the transaction is one that is treated as provided accommodation for employment purposes then the consideration is the higher of the market value rent or the amount treated as the employee’s employment income (unless the provision is exempt from charge as employment income, in which case there is no chargeable consideration for stamp duty land tax purposes). In any other case, the chargeable consideration is not less than the market value of the subject-matter of the transaction.

16. Paragraph 13 excludes various usual obligations (and any payment made under those obligations) from chargeable consideration for grant of a lease. But rent is not excluded from charge. Where a lease is transferred (either by landlord or tenant) the assumption or release of such obligations is also not chargeable consideration.

17. Paragraph 14. Where a new lease is granted on the surrender of an existing lease, and the new lease is of the same premises, on the same terms and covers the unexpired term of the existing lease, then the surrender does not count as chargeable consideration for the grant, and the grant does not count as chargeable consideration for the surrender.

18. Paragraph 15 clarifies that, on the grant or surrender of a lease, a reverse premium does not count as chargeable consideration.

19. Paragraph 16 ensures that indemnities given by the purchaser to the vendor for any ongoing liabilities relating to the land (including for lease covenants) do not count as chargeable consideration.

BACKGROUND

20. Under the current stamp duty regime, chargeable consideration essentially comprises money, the assumption or release of debt, shares and securities and other property. The move to any consideration that is money or has money’s worth follows the precedent set by stamp duty reserve tax.

EXPLANATORY NOTE

**CLAUSE 51: CONTINGENT, UNCERTAIN OR UNASCERTAINED
CONSIDERATION**

SUMMARY

1. This clause sets out rules for establishing the chargeable consideration for a transaction where the amount of the consideration is contingent, uncertain, or unascertained.

DETAILS

2. Subsection (1) provides that where the whole or part of the chargeable consideration for a transaction is contingent, the amount of consideration should be calculated on the assumption that the amount relating to the contingency will be payable, whether or not the occurrence of the contingency means that the amount will be payable or cease to be payable.

3. Subsection (2) provides that where the whole or part of the chargeable consideration for a transaction is uncertain or unascertained, the amount of consideration should be calculated on the basis of a reasonable estimate of the outcome.

4. Subsection (3) defines "contingent" and "uncertain".

5. Subsection (4) provides that this clause takes effect subject to clause 80 (adjustment where contingency ceases or consideration is ascertained) and clause 90 (application to defer payment in case of contingent or uncertain consideration).

BACKGROUND

6. This clause sets out how the consideration for a transaction should be calculated in circumstances where the consideration is contingent uncertain, or not yet ascertained. Where a contingency affects the eventual amount of consideration, purchasers must calculate the consideration on the basis that the amount relating to the contingency will be payable. And where the consideration is uncertain or has not yet been ascertained – for example, where it is based on profits in accounts which have not yet been drawn up - purchasers must make a reasonable estimate of the final consideration as at the effective date of the transaction.

7. This clause is subject to a purchaser making an adjustment under clause 80 where stamp duty land tax has been paid on the basis of a reasonable estimate (or where an assumed contingency does not happen), or making a claim for deferred payment under clause 90.

EXPLANATORY NOTE

CLAUSE 52: ANNUITIES ETC: CHARGEABLE CONSIDERATION LIMITED TO TWELVE YEARS' PAYMENTS

SUMMARY

1. This clause determines how stamp duty land tax will apply where the chargeable consideration for a land transaction is in the form of annuity payments.

DETAILS

2. Subsection (1) provides that this clause applies to annuities which are payable for life, in perpetuity, for an indefinite period, or for a period which exceeds twelve years.

3. Subsection (2) provides that where the chargeable consideration for a transaction is in the form of an annuity, the chargeable consideration shall be limited to twelve years' payments.

4. Subsection (3) determines that, where the amount payable under the annuity can vary, the twelve highest annual payments will be taken. This does not apply where the variation relates only to inflation.

5. Subsection (4) defines annual payments for the purposes of this clause.

6. Subsection (5) provides that where the amount of any annual payment is contingent or uncertain, clause 51 (contingent, uncertain or unascertained consideration) will apply to determine the amount of the payment.

7. Subsection (6) provides that where an amount of consideration (except rent) is to be paid periodically, then the provisions of this clause apply.

8. Subsection (7) provides that where the chargeable consideration is paid by way of annuity, there will be no adjustment to the amount payable under clause 80 (adjustment where contingency ceases or consideration is ascertained). In addition it provides that there can be no application to defer

payment under clause 90 (application to defer payment in case of contingent or uncertain consideration).

BACKGROUND

9. Clause 52 determines how stamp duty land tax will apply where the chargeable consideration is in the form of an annuity. It provides that, where an annuity is paid as consideration for a land transaction, the chargeable consideration will be taken to be a one-off payment comprising twelve year's payments. Where the payments vary, the twelve highest payments will be taken into account. Stamp duty land tax will accordingly be payable as a single payment. There is no provision for stamp duty land tax payments to be deferred, or for an adjustment of the amount paid at a later date.

10. The use of twelve years follows the application of the current regime for annuities terminable on death.

EXPLANATORY NOTE

CLAUSE 53: DEEMED MARKET VALUE WHERE TRANSACTION INVOLVES CONNECTED COMPANY

SUMMARY

1. This clause provides for stamp duty land tax to be charged on market value when a company purchases land from a person with whom the company is connected.

DETAILS

2. Subsection (1) provides that where the purchaser is a company and the vendor is connected with that company, or some or all of the consideration for the transaction consists of the issue or transfer of shares in any company with which the vendor is connected, the consideration for the transaction will be no less than the market value of the land as at the effective date of the transaction.

3. Subsection (2) applies the definition of connected person from section 839 ICTA .

4. Subsection (3) defines 'company' and 'shares' for the purposes of this clause.

5. Subsection (4) provides that, with the exception of the exemption for transactions for which there is no chargeable consideration, a claim to exemption from stamp duty land tax overrides the provisions of this clause.

6. Subsection (5) states that this clause is subject to the exceptions in clause 54.

BACKGROUND

7. This clause ensures that stamp duty land tax will be charged on the full market value of any land purchased by a company with which the vendor is connected.

8. For example, if land is purchased by a company from a vendor which is connected with that company in consideration for the issue of securities whose value is less than that of the land, then the clause ensures that stamp duty land tax is charged on the market value of the land.

9. This clause does not affect situations where specific exemptions apply. And it is subject to the exceptions provided for in clause 54 (exceptions from connected company rule).

EXPLANATORY NOTE

CLAUSE 54: EXCEPTIONS FROM DEEMED MARKET VALUE RULE

SUMMARY

1. This clause provides exceptions from the connected company rules in clause 53 for transfers to independent corporate trustees and distributions of land, including distributions on liquidation, to corporate shareholders, other than in specific circumstances.

DETAILS

2. Subsection (1) provides exceptions from clause 53 for a number of cases specified in subsections (2) to (4).

3. Subsection (2) provides an exception where the purchaser holds the land as a trustee in the course of a business of trust management.

4. Subsection (3) provides an exception where the purchaser holds land in the capacity of a trustee and, is not "connected" with the vendor other than by way of section 839(3) ICTA.

5. Subsection (4) provides an exception where the vendor is a company, and the transaction relates to the distribution of assets, including a distribution made in connection with the winding up of a company. It does not apply if the vendor has claimed group relief for the land on a transaction that has taken place in the three years prior to the transaction.

BACKGROUND

6. Clause 53 (transaction involving connected company) ensures that stamp duty land tax is charged on the full market value of any land purchased by a company with which the vendor is connected. This clause provides a number of exceptions from the connected company provision. Where the exceptions apply, the charge to stamp duty land tax will only apply to any chargeable consideration paid for the transaction.