

EXPLANATORY NOTE

CLAUSE 71: CERTAIN ACQUISITIONS BY REGISTERED SOCIAL LANDLORD

SUMMARY

1. This clause provides for an exemption from stamp duty land tax for a range of transactions where the purchaser is a registered social landlord.

DETAILS OF THE CLAUSE

2. Subsection (1) exempts from stamp duty land tax transfers to registered social landlords where the registered social landlord is controlled by its tenants, the vendor is a qualifying body, or the transaction is funded with the assistance of a public subsidy.
3. Subsection (2) defines “controlled by its tenants” as where the majority of the board members are tenants occupying properties owned or managed by the registered social landlord. Subsection (2) also defines “Board member” in this context.
4. Subsection (3) defines a “qualifying body.”
5. Subsection (4) defines a “public subsidy.”

BACKGROUND

6. This clause is based on the existing relief from stamp duty in section 130 Finance Act 2000. Note that many registered social landlords are charities, and transfers to charities are exempted under clause 68. This relief is designed to encourage the provision of social housing and help the voluntary transfer programme.

EXPLANATORY NOTE

**CLAUSE 72: ALTERNATIVE PROPERTY FINANCE: LAND SOLD TO
FINANCIAL INSTITUTION AND LEASED TO INDIVIDUAL**

SUMMARY

1. This clause details a set of reliefs from stamp duty land tax for the granting of a particular lease and the transfer of property where certain conditions are met.

DETAILS OF THE CLAUSE

2. Subsection (1) describes the type of arrangement being undertaken. It explains that the clause only applies where the arrangements are being entered into between a financial institution and an individual.

3. Subsection (1)(a) defines the “first transaction” that occurs as part of the arrangements for the benefit of this clause.

4. Subsection (1)(b) defines the “second transaction” that occurs as part of the arrangements for the benefit of this clause.

5. Subsection (1)(c) describes the final part of the arrangements being entered into.

6. Usually stamp duty land tax will be due on the first transaction. But subsection (2) details the specific circumstances in which the first transaction is exempt from stamp duty land tax. This allows an individual to move to a new financial institution or to set up a new arrangement with their existing financial institution without incurring an extra charge.

7. Subsection (3) exempts from stamp duty land tax the second transaction where prescribed conditions are met.

8. Subsection (4) describes the criteria that must be met in order for the final part of the arrangements (as described in subsection (1)(c)) to be exempt.

9. Subsection (5) states that subsection (4) of clause 44 and clause 46 do not apply to the agreement in subsection (1)(c) of this clause.

10. Subsection (6) states the situations in which certain types of individuals will not satisfy the requirements of this relief.
11. Subsection (7) defines what is meant in this section by “financial institution.”
12. Subsection (8) explains how the application of the terms “freehold interest” and “leasehold interest” in this clause should be understood in Scotland.
13. Subsection (9) deals with the scenario where the individual that has undertaken the alternative arrangement dies.

BACKGROUND

14. This clause is relevant to individuals using alternative property financing arrangements, including “Islamic mortgages”, whereby a financial institution purchases a property and leases it to that individual over an agreed term. At the end of that term the property is transferred to the individual. The combined effect of the reliefs is to place the amount of stamp duty land tax due when purchasing property using these arrangements on a level footing with the amount due for purchases with ‘conventional’ mortgage products.
15. The substantial performance of contracts rule, and options rules in clauses 44 and 46 are disapplied for the third transaction in order to ensure stamp duty land tax reporting requirements are triggered on completion of the transfer.

EXPLANATORY NOTE

**CLAUSE 73: ALTERNATIVE PROPERTY FINANCE: LAND SOLD TO
FINANCIAL INSTITUTION AND RESOLD TO INDIVIDUAL**

SUMMARY

1. This clause details a set of reliefs from stamp duty land tax for transfer of property where certain conditions are met.

DETAILS OF THE CLAUSE

2. Subsection (1) describes the type of arrangement being undertaken. It explains that the clause only applies where the arrangements are being entered into between a financial institution and an individual.
3. Subsection (1)(a)(i) defines the “first transaction” that occurs as part of the arrangements for the benefit of this clause.
4. Subsection (1)(a)(i) defines the “second transaction” that occurs as part of the arrangements for the benefit of this clause.
5. Subsection (1)(b) describes the final part of the arrangements being entered into.
6. Usually stamp duty land tax will be due on the first transaction. But subsection (2) details the specific circumstances in which the first transaction is also exempt from stamp duty. This allows an individual to move to a new financial institution or to set up a new arrangement with their existing financial institution without incurring an extra charge.
7. Subsection (3) exempts from stamp duty land tax the second transaction where prescribed conditions are met.
8. Subsection (4) states the certain types of individual that this clause does not apply to.
9. Subsection (5)(a) defines what is meant in this section by “financial institution.”

10. Subsection (5)(b) defines the term “legal mortgage” as used in subsection (1)(b).
11. Subsection (6) deals with the scenario where the individual that has undertaken the alternative arrangement dies.

BACKGROUND

12. This clause is relevant to individuals using alternative property financing arrangements, including “Islamic mortgages”, to purchase a property. The arrangements covered are where a financial institution purchases a property and sells it to that individual for a consideration that is paid in instalments. The combined effect of the reliefs is to place the amount of stamp duty land tax due when purchasing property using these arrangements on a level footing with the amount due on the purchase of property when using ‘conventional’ mortgage products.

EXPLANATORY NOTE

**CLAUSE 74: COLLECTIVE ENFRANCHISEMENT BY
LEASEHOLDERS**

SUMMARY

1. This clause amends the rate of tax in relation to transactions made by virtue of a right of collective enfranchisement.

DETAILS OF CLAUSE

2. Subsection (1) states when this clause applies.
3. Subsection (2) states that where subsection (1) applies that the rate of tax is determined by reference to a value produced by way of a stated calculation.
4. Subsection (3) states that this rate of tax is then applied to the chargeable consideration.
5. Subsection (4) details the relevant legislation that defines a “RTE company”, the “right of collective enfranchisement” and “flat”.
6. Subsection (5) clarifies the meaning of “relevant consideration” for the purposes of this clause.

BACKGROUND

7. In order for a leaseholder of a flat to buy their freehold they must meet a number of statutory requirements. One of these requirements means that purchases have to be made in conjunction with other leaseholders in a RTE company. This means that the consideration for the transaction is the total payment for all of the freeholds being purchased. This clause determines the rate at which to charge stamp duty land tax on this consideration by reference to a calculated value rather than by reference to the consideration. This in many cases will mean that stamp duty land tax is paid on the transaction at a lower rate than would be the case if the total consideration were used to determine the rate. Thus the total stamp duty land tax due will be more in line with the stamp duty land tax that would have been due had each share of the freehold been bought separately.

EXPLANATORY NOTE

CLAUSE 75: CROFTING COMMUNITY RIGHT TO BUY

SUMMARY

1. This clause amends the rate of tax in relation to transactions made by virtue of the “crofting community right to buy”.

DETAILS OF CLAUSE

2. Subsection (1) states when this clause applies.
3. Subsection (2) states that where subsection (1) applies that the rate of tax is determined by reference to a value produced by way of a stated calculation.
4. Subsection (3) states that this rate of tax is then applied to the chargeable consideration.
5. Subsection (4) details the relevant legislation that defines the “crofting community right to buy”.
6. Subsection (5) clarifies the meaning of “relevant consideration” for the purposes of this clause.

BACKGROUND

7. In order for a crofter to buy their croft they must meet a number of statutory requirements. One of these requirements means that purchases have to be made in conjunction with other crofters in a crofting community body. This means that the consideration for the transaction is the total payment for all of the crofts being purchased. This clause determines the rate at which to charge stamp duty land tax on this consideration by reference to a calculated value rather than by reference to the consideration. This in many cases will mean that stamp duty land tax is paid on the transaction at a lower rate than would be the case if the total consideration were used to determine the rate. Thus the total stamp duty land tax due will be more in line with the stamp duty land tax that would have been due had each croft been bought separately.

EXPLANATORY NOTE

CLAUSE 76: DUTY TO DELIVER LAND TRANSACTION RETURN

SUMMARY

1. This clause provides that for every notifiable transaction a completed land transaction return including a self-assessment of liability and payment of the stamp duty land tax must be delivered to the Inland Revenue within 30 days of the effective date of the transaction.

DETAILS OF CLAUSE

2. Subsection (1) provides that for every notifiable transaction (as defined in clause 77) a land transaction return must be delivered to the Inland Revenue within 30 days of the effective date of the transaction (defined in clause 119).

3. Subsection (2) provides that the return must include a self-assessment of liability and be accompanied by payment of the amount chargeable.

BACKGROUND

4. This clause deals with the requirement to deliver a return. In contrast to income tax and corporation tax the requirement is not dependent on notice being sent first by the Inland Revenue.

5. The time limit for delivering a return is 30 days from the effective date (normally completion – see clause 44). There are penalties for late returns and interest for late payment (see clause 87 and Part 1 of Schedule 10. Schedule 10 deals also with related matters such as appeals.

EXPLANATORY NOTE

CLAUSE 77: NOTIFIABLE TRANSACTIONS

SUMMARY

1. This clause specifies what land transactions are notifiable. If the transaction is the grant of a lease then it is notifiable if it is for 7 years or more or if the consideration is such that tax is due or would be due if a relief had not been claimed. If the transaction is any other major interest in land (see clause 117) then it is notifiable unless it is exempt from charge under schedule 3. Other transactions are only notifiable if there is tax due or would be due if it were not for a relief.

DETAILS OF CLAUSE

2. Subsection (1) is introductory.
3. Subsection (2) provides that where the transaction is the grant of a lease, it is notifiable if the lease is for a term of 7 years or more and is granted for chargeable consideration, or if it is for less than 7 years and the consideration for the rent or premium is such that tax is due or would be were it not for a relief (for the rules for charging tax on rent see Schedule 5).
4. Subsection (3) provides that any other acquisition of a “major interest in land” (defined in clause 117) is notifiable unless it is exempt from charge under Schedule 3.
5. Subsection (4) provides that any other transaction is only notifiable if there is tax due at 1% or more, or would be if it were not for a relief.

BACKGROUND

6. Stamp duty land tax will not require all transactions to be notified but restricts notification to those cases dealt with above. In general these are cases which involve the acquisition of a lease or freehold for consideration or transactions where a relief is claimed.
7. Where notification is required a land transaction return must be delivered to the Inland Revenue (see clause 76).

EXPLANATORY NOTE

**CLAUSE 78 AND SCHEDULE 10: RETURNS, ENQUIRIES,
ASSESSMENTS AND RELATED MATTERS**

SUMMARY

1. This clause provides for Schedule 10 which deals with returns, enquiries, compliance powers and other matters. It also empowers the Treasury to amend the Schedule by regulation.

DETAILS OF THE CLAUSE

2. Subsection (1) provides for Schedule 910.
3. Subsection (2) lists the titles of the Part of the Schedule.
4. Subsection (3) provides for the Treasury to make regulations to amend the Schedule if it appears necessary or expedient.

DETAILS OF THE SCHEDULE

Part 1: Land transaction returns

5. This Part of the Schedule deals with returns. It provides for the contents of the return, defines delivery and covers amendment of a return, penalties for failure to deliver a return by the filing date and penalties for incorrect returns.
6. Paragraph 1 deals with the contents of the return. It must be in the form and include the information required by the Inland Revenue (and to be set out in regulations). It must also be signed by each of the purchasers. It can include information that was formerly required under Schedule 2 to the Finance Act 1931 to be delivered and which is requested in the current stamp duty form.
7. Paragraph 2 defines “filing date” and “delivery of the return” for the purposes of stamp duty land tax. The return is delivered when it complies with the requirement of paragraph 2 and is accompanied by self-assessment of

liability and payment of tax. Filing date means the last day of the period in which the return must be delivered.

8. Paragraph 3 provides a flat rate penalty for failure to deliver a return. It is based on paragraph 17(1) and (2) of Schedule 18 to Finance Act 1998. The income tax equivalent is in section 93(2) and (4) TMA. It provides for fixed penalties for late filing of notifications. The penalties are in line with those for self-assessment.

9. Paragraph 4 provides for a tax-related penalty for a failure to deliver a return where the person who is required to deliver a return in respect of a chargeable transaction fails to do so within 12 months of the filing date.

10. Paragraph 5 provides for Inland Revenue to make a request by notice to a person to deliver a return within a given time (not less than 30 days). If the return is not made they can apply to the Commissioners for the award of a daily penalty (of up to £60 per day) for failure to submit a return. It is based on section 93(3) TMA. This paragraph does not affect penalties under paragraphs 6 and 7.

11. Paragraph 6 allows purchasers to amend their returns by notice to the Inland Revenue within 12 months of the filing date. It is based on section 9ZA TMA and paragraph 15 of Schedule 18 Finance Act 1998.

12. If a purchaser discovers too much tax has been paid after the opportunity to amend the return has passed, he may claim relief for the mistake under paragraph 34.

13. Paragraph 7 provides for correction of returns by the Inland Revenue by notice to the purchaser(s). It is based on paragraph 16 of Schedule 18 to Finance Act 1998. A similar provision for income tax is section 9ZB TMA. The Inland Revenue can, by notice amend a return to correct obvious errors and omissions. The amendment must be within nine months from the date the return is delivered. The purchaser can amend the return so as to reject the correction, within three months of the date of issue of the notice of correction.

14. Paragraph 8 provides a penalty for an incorrect or uncorrected return. It is based on paragraph 20(1) and (2) of Schedule 18 to Finance Act 1998. Section 95(1) and (2) TMA provide an income tax equivalent. It provides for a penalty of a maximum of the amount of understated tax if a return is incorrect because of fraud or neglect (or delay in putting it right).

Part 2: Duty to keep and preserve records

15. This Part of the Schedule deals with preservation of records.

16. Paragraph 9 deals with the duty of the purchaser to keep and preserve records, for the longer of:

- six years from the effective date of the transaction,
- the end of any enquiry, or
- the end of the enquiry window (this may be after six years if the return is submitted very late).

17. Records to be kept must include:

- all relevant instruments relating to a transaction, and
- financial records relating to the transaction.

18. Paragraph 10 allows the preservation of information instead of original records. It is based on paragraph 22(1) and (2) of Schedule 18 to Finance Act 1998. An income tax equivalent is in section 12B(4) TMA. It permits records to be kept in an alternative form (such as microfiche or an electronic facsimile) as long as the information they contain is preserved. It also provides that if the records are kept in this form they will be admissible as evidence before an appeal tribunal.

19. Paragraph 11 provides a penalty for failure to keep and preserve records of a maximum of £3,000, with the exception that no penalty is incurred if the information which would have been provided by the records is provided to them by other documentary evidence. In income tax a similar penalty is provided by section 12B(5) TMA, and in corporation tax by paragraph 23 of Schedule 18 to Finance Act 1998.

Part 3: Enquiry into land transaction return

20. This Part of the Schedule deals with enquiries into land transaction returns. It gives the Inland Revenue powers based on those for income tax and corporation tax to enquire into returns, without giving reasons, and to issue notices for documents and information. These powers are balanced by a right of appeal against information notices, a right of referral of questions to the Special Commissioners and the right to apply to the General or Special Commissioners for the enquiry to be closed.

21. Paragraph 12 provides for the Inland Revenue to make enquiries into returns within 9 months of the submission of the land transaction return.

22. Paragraph 13 deals with the scope of enquiry it is based on paragraph 25 of Schedule 18 to Finance Act 1998. A similar provision for income tax is in section 9(4) and (5) TMA.

23. The enquiry can be into the amount of tax chargeable or the question of whether tax is chargeable. Where an enquiry is made into an amended return

after the enquiry period is closed the enquiries are limited to matters which are amended or affected by the amendment.

24. Paragraph 14 permits the Inland Revenue to issue a notice to produce documents etc for purposes of enquiry. It is based on paragraph 27 of Schedule 18 to Finance Act 1998. A similar provision for income tax is in section 19A TMA.

25. Paragraph 15 allows the purchaser to appeal against a notice to produce documents issued under paragraph 14. It is based on paragraph 28 of Schedule 18 to Finance Act 1998. The equivalent provision for income tax is in section 19A(6) TMA.

26. Paragraph 16 provides for a penalty of £50 for the failure to produce documents required by a notice under paragraph 14. If the failure continues, then further penalties of up to £30 per day can be determined by the Inland Revenue and up to £150 if it is determined by the court.

27. It is based on paragraph 29 of Schedule 18 to Finance Act 1998. The equivalent provision for income tax is in section 97AA TMA.

28. Paragraph 17 provides for the amendment of the return by the Inland Revenue during course of enquiry to prevent loss of tax. It is based on paragraph 30 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 9C TMA.

29. Paragraph 18 allows the taxpayer to amend his return during course of an enquiry. It is based on paragraph 17 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 9B of TMA.

30. Paragraph 19 deals with the referral of questions to Special Commissioners during enquiry by the Inland Revenue or the person who made the return. It is based on paragraph 31A of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28ZA of TMA.

31. Paragraph 20 provides for the withdrawal of notice of referral by the Inland Revenue or the person who made the return. It is based on paragraph 31B of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28ZB TMA.

32. Paragraph 21 deals with the effect of referral under paragraph 20 on an enquiry. It is based on paragraph 31C of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28ZD TMA.

33. Paragraph 22 provides that the determination of any question by the Special Commissioners under paragraph 20 is binding on the parties. It is based

on paragraph 31D of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28ZE TMA.

34. Paragraph 23 deals with the completion of enquiry and requires the Inland Revenue to issue a closure notice. It is based on paragraph 32 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28A(1), (2) and (3) TMA.

35. Paragraph 24 provides for the person who made the return to seek from the General or Special Commissioners a direction that the Inland Revenue should issue a closure notice. It is based on paragraph 33 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28A(4), (5) and (6) TMA.

Part 4: Revenue determination if no return delivered

36. This Part of the Schedule deals with determinations by the Inland Revenue of tax chargeable where no return is delivered.

37. Paragraph 25 allows the Inland Revenue to determination of tax chargeable if no return is delivered. It is based on parts of paragraph 36 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28C(1) and (2) and (5) TMA.

38. Paragraph 26 provides that the determination has the same effect as self-assessment by the purchaser for all enforcement purposes. It is based on parts of paragraph 39 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28C(3) TMA.

39. Paragraph 27 provides that if, after a determination under paragraph 26, the purchaser makes a self-assessment, that supersedes the determination. It is based on paragraph 40 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 28C(4) and (5) TMA.

Part 5: Revenue assessments

40. This Part of the Schedule provides for Revenue assessments in certain defined cases. Discovery assessments can be made outside of enquiry periods. We propose following as far as possible Inland Revenue practice for income tax and corporation tax which is set out in the Enquiry handbook at EH560 to EH595.

41. Paragraph 28 deals with discovery assessments. It is based on paragraph 41 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 29(1) TMA. Where information becomes available to the Inland Revenue this paragraph provides that the Inland Revenue may make a “discovery assessment”. Where a return is made by the purchaser, this

paragraph permits the making of a discovery assessment after the time limit for an enquiry (9 months given by paragraph 13) has ended but subject to the restrictions covered in paragraph 31.

42. Paragraph 29 provides for an assessment to recover an excessive repayment of tax. It is based on section 30 TMA. A similar provision applying for corporation tax is paragraph 52 of Schedule 18 to Finance Act 1998. The assessment is subject to the general time limit rules in paragraph 32 and special rules in paragraph 32(3).

43. Paragraph 30 sets out the circumstances where a discovery assessment can be made if the purchaser has delivered a return in respect of a transaction. There has to be fraudulent or negligent conduct on the part of the purchaser or a person acting on his behalf (or a partner) and the information on which the Inland Revenue base the return has to be information that they could not reasonably be expected to be aware of when the return was delivered. Furthermore no assessment can be made if the return was made in accordance with generally prevailing practice at the time it was delivered. It is based on paragraph 42 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 29(4), (5) and (6) TMA.

44. Paragraph 31 provides the time limit for assessments. The general time limit is 6 years after the effective date but in cases of fraud or negligence this is extended to 21 years. If the purchaser has died assessments must be made within 3 years of the date of death and can only cover transactions within the 6 years prior to death. It is based on paragraph 46 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in sections 34(1) and (2) and 36 TMA.

45. Paragraph 32 provides procedure for making an assessment. It is based on paragraph 47 of Schedule 18 to Finance Act 1998. An equivalent provision for income tax is in section 30A(3) and (4) TMA. It also incorporates section 113(1B) of TMA.

Part 6: Relief in case of excessive assessment

46. This Part of the Schedule deals with cases where a purchaser is assessed twice in error. This is extremely unlikely to occur since in almost all cases tax will only be collected as a result of the submission of a return. It also provides for cases where there was an error or mistake in a return and the time limit for amending it in paragraph 3(3) of this Schedule has passed.

47. Paragraph 33 provides relief in the cases of double assessment. If a person believes he has been assessed more than once in respect of the same transaction, he can claim relief in writing under this paragraph. The Inland Revenue then has to decide whether to accept the claim and if they do not the

person assessed can appeal to the Commissioners. It is based on section 32 TMA and paragraph 50 of Schedule 18 to Finance Act 1998.

48. Paragraph 34 provides for relief in cases of a mistake in a return. It is based on section 33 TMA and paragraph 51 of Schedule 18 to Finance Act 1998.

49. If a person believes they have paid too much tax by reason of some mistake in a land transaction return, he may make a claim to relief to the Inland Revenue. The claim must be within 6 years of the effective date. The paragraph also provides that the Inland Revenue shall make enquiries to decide whether the claim is justified and shall repay any overpaid tax. Decisions of the Inland Revenue can be appealed against. No relief is due where the return was made in accordance with generally prevailing practice or where the error is in a claim or election included in the return.

Part 7: Appeals against revenue decisions on tax

50. This Part of the Schedule deals with appeals. Appeals are to the General Commissioners and, on election, to the Special Commissioners. Proceedings before Commissioners will be covered by regulations made under vires powers in Schedule 17. The rights of appeal, the settlement of appeals and postponement applications are the same way as they are for self-assessment.

51. Paragraph 35 provides a right of appeal against:

- amendments of self-assessment to prevent loss of tax (paragraph 18)
- a conclusion stated or amendment made by a closure notice (paragraph 24)
- a discovery assessment (paragraph 29)
- an assessment to recover overpaid tax (paragraph 30)

52. It is based on section 31 (1) and (2) TMA.

53. Paragraph 36 deals with the notice of appeal and the time limit of 30 days from the specified date, which is the date of the notice of amendment, closure or assessment. The notice must state the grounds of the appeal but at the hearing the commissioners may allow other grounds to be taken into consideration. It is based on section 31A TMA.

54. Paragraph 37 allows appeals to be settled by agreement between the appellant and the Inland Revenue and for such agreement to have the same force as determinations of appeal by the commissioners. The agreement does not have to be in writing but if it is not it must be confirmed in writing by the Inland Revenue. The appellant can withdraw from the agreement within 30 days and can withdraw the appeal. The agreement is binding if it is made by a person acting on behalf of an appellant. It is based on section 54 TMA.

55. Paragraph 38 makes it clear that where there is an appeal under paragraph 44 against an assessment or amendment it does not affect the collection of tax on the assessment, unless there is a postponement application – see paragraphs 48 and 49. It is based on section 55(2) TMA.

56. Paragraph 39 permits the appellant to apply in writing to the Commissioners for a direction that payment of tax charged should be postponed pending determination of the appeal. It is based on section 55(3), (4), (5), (6) and (9) TMA.

57. The notice must be given to the Inland Revenue within 30 days of the specified date for the appeal (see paragraph 45), but if there is a change in circumstances it can be later. The determination of an application is heard by the Commissioners in the same way as an appeal. After the determination if the circumstances change another application can be made. The Commissioners will decide on the evidence the reasonable amount of tax to be postponed. Where an application for postponement is made but extra tax is due following the determination, it is due and payable as if it were an assessment on the date of determination. The postponement application is corrected one way or the other by the determination of the appeal.

58. Amounts of tax not postponed will remain due and payable.

59. Paragraph 40 permits applications postponing tax to be settled by agreement between the Inland Revenue and the appellant. It is based on section 55(7), (8) and (10B) TMA.

60. Any agreement has the same force as if it was by the Commissioners. The agreement does not have to be in writing but where it is not it must be

confirmed by the Inland Revenue in writing. The agreement can be with a person acting on behalf of an appellant.

BACKGROUND

61. Stamp duty has an antiquated compliance system. It is based on documents being sent to the Inland Revenue for stamping. They are then checked and the appropriate stamp is applied when payment is made. Once a document is stamped the duty cannot be altered even if new information comes to light later. If the Inland Revenue need to ask questions to ascertain the correct stamp they must do so before the document is stamped. Appeals against decisions of the Inland Revenue are only to the High Court.

62. Since 1999, interest and penalties has been provided for late stamping (see sections 15A and 15B Stamp Act 1891, inserted by section 109(1) of Finance Act 1999) but there is no requirement to submit a document for stamping unless it needs to be stamped for other purposes. Appeals against these penalties in the current regime are to the Special Commissioners.

63. Stamp duty land tax applies to transactions not documents, which means that new compliance procedures are needed. The scheme adopted is based on self-assessment, and legislation for income tax and corporation tax in TMA and in Schedule 18 Finance Act 1998. This allows stamp duty land tax to use established procedures which will be familiar to many tax practitioners and the Inland Revenue. The legislation is fully balanced by rights of appeal to the General and Special Commissioners which are independent tax tribunals.

EXPLANATORY NOTE

**CLAUSE 79 AND SCHEDULE 11: REGISTRATION OF LAND
TRANSACTIONS ETC**

SUMMARY

1. This clause and schedule provide that (unless exempt from certification) no document effecting or evidencing a land transaction may be registered or otherwise reflected in an entry at the various UK land registries without a certificate as to compliance with the requirements of stamp duty land tax. Depending on the type of transaction, the certificate will be issued by either the Inland Revenue or the purchaser (self-certification). The Inland Revenue is empowered to obtain details of certificates from the land registries.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that HM Land Registry and the equivalent registries in Scotland and Northern Ireland must not amend the registers to reflect a transaction unless an appropriate certificate is received. This does not apply

- where the land registries are obliged to act without receipt of an application, e.g. certain situations under the commonhold regime.
- where the entry relates to an interest or right other than the chargeable interest acquired by the purchaser under the land transaction giving rise to the application.

3. Subsection (2) provides that this applies to every land transaction other than:

- transactions exempt from charge under clause 48 (exempt interests)
- transactions exempt or relieved from charge under any other provision which do not involve a major interest in land (see clause 117)
- contracts which are land transactions by virtue of having been substantially performed under clause 44 or being a transfer of rights under clause 45

4. Subsection (3) confirms that the certificate referred to in subsection (1) must be either:

- issued by the Inland Revenue evidencing the submission of a land transaction return (with payment if appropriate), or
- issued by the purchaser self-certifying that no land transaction return is required for the transaction.

5. Subsection (4) permit the Inland Revenue to make regulations about certificates issued by them. Subsection (5) gives effect to Schedule 11 which makes further provision about self-certificates (see below)

6. Subsection (6) obliges the land registries to allow the Inland Revenue to inspect certificates and self certificates in their possession and empowers them to make arrangements affording the Revenue other information etc. to verify that the requirements of this legislation have been complied with.

DETAILS OF THE SCHEDULE

7. Schedule 11 makes further provision for self-certificates. It provides the enquiry and compliance powers similar to Schedule 10

8. Paragraph 1 is introductory and defines references to self-certificate and to the date on which a self-certificate was produced.

9. Paragraph 2 provides for the content of the self-certificate to be prescribed by regulations made by the Inland Revenue.

10. Paragraph 3 provides for a tax related penalty similar to that for returns in paragraph 9 of Schedule 10.

11. Paragraphs 4 and 5 provide a duty to keep records relating to self-certificates similar to that for returns in paragraph 10 and 11 of Schedule 10.

12. Paragraph 6 provides a penalty for a failure to preserve records.

13. Paragraphs 7 and 8 provide for notice and scope of enquiries on a similar basis as for returns in paragraphs 13 and 14 of Schedule 10.

14. Paragraphs 9, 10 and 11 deal with information notices for enquiries into self-certificates, appeals against the notices and penalties for failure to comply with the notices. They are similar to paragraphs 15,16 and 17 of Schedule 10.

15. Paragraphs 12 to 15 provide for the referral of questions to the Special Commissioners during enquiry, withdrawal of the notice, the effect of the

referral on the enquiry and the effect of the determination of the issue. They are based on similar provisions in paragraphs 20 to 23 of Schedule 10.

16. Paragraphs 16 and 17 deal with the completion of the enquiry and a Commissioners' direction to complete the enquiry. They are based on similar provisions in paragraphs 24 and 25 of Schedule 10.

BACKGROUND

17. This clause preserves the current position as set out in section 14(3) of the Land Registration Act 1925 in relation to ad valorem stamp duty.

18. The self-certification brings into stamp duty land tax the process available in stamp duty in the Stamp Duty (Exempt Instruments) Regulations 1987 SI 1987/516.

19. The Inland Revenue has similar powers of enquiry in relation to self-certificates as they have for returns.

EXPLANATORY NOTE

**CLAUSE 80: ADJUSTMENT WHERE CONTINGENCY CEASES OR
CONSIDERATION IS ASCERTAINED**

SUMMARY

1. This clause provides for the amount of stamp duty land tax payable to be adjusted when the amount of consideration is determined in cases where stamp duty land tax was paid on the basis of the rules in clause 51, because the whole or part of the consideration for the transaction was contingent, uncertain, or unascertained at the outset.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that this clause applies where a person has paid stamp duty land tax on consideration which was contingent, uncertain or unascertained and either the contingency occurs or it becomes clear that it will not occur, or an amount which is relevant to the calculation of the consideration becomes ascertained. It also provides for the clause to apply to a transaction linked with the transaction in question.

3. Subsection (2) provides that a return is required within 30 days of the events set out in subsection (1) above if the information resulting from those events means that a transaction becomes notifiable or chargeable for the first time, that tax is payable for the first time, or if additional tax is due. It provides that the return must contain a self-assessment of the tax payable calculated in accordance with the rates in force at the effective date of the transaction, together with payment of any tax due.

4. Subsection (3) applies Schedule 10 to a return under this section as it applies to a land transaction return.

5. Subsection (4) provides for a claim to be made for repayment of tax if the result of the events in subsection (1) above is that less tax is payable for the transaction. And it provides for interest to be paid on the overpaid tax from the date of payment.

BACKGROUND

6. This clause complements clause 51. That clause provides, in cases where the amount of consideration is not fixed at the date of the transaction, for an estimated amount of stamp duty land tax to be paid on the normal due date. The clause provides for an adjustment of the amount of stamp duty land tax to be paid once the amount of consideration to be paid is settled. If more tax is payable the clause provides that a return must be filed and the tax paid, and it also provides for a claim to repayment if tax has been overpaid, and for interest to be paid on any overpaid tax.

EXPLANATORY NOTE

CLAUSE 81: FURTHER RETURN WHERE RELIEF WITHDRAWN

SUMMARY

1. This clause provides for a further return where relief is withdrawn under anti-avoidance provisions in Part 1 or 2 of Schedule 7, or Schedule 8.

DETAILS OF THE CLAUSE

2. Subsection (1) sets out the scope of the clause and provides for a further return to be made within 30 days of “the disqualifying event”. It applies where a relief is withdrawn under Part 1 of Schedule 7 (withdrawal of group relief), Part 2 of Schedule 7 (withdrawal of reconstruction or acquisition relief), Schedule 8 (withdrawal of charities relief). These are anti-avoidance provisions which withdraw reliefs in certain circumstances.

3. The further return must be made within 30 days of the “disqualifying event” (see subsection (4)).

4. Subsection (2) deals with the contents of the return. It must include a self-assessment of the tax due and payment of the tax chargeable.

5. Subsection (3) applies Schedule 10 to returns under this clause with necessary modifications.

6. Subsection (4) defines “disqualifying event”. It is that provided by the relevant clauses dealing with withdrawal.

BACKGROUND

7. This clause is based on provisions for stamp duty in paragraph 6 of Schedule 34 and paragraph 7 of Schedule 35 to Finance Act 2002, as extended.

8. The necessary administrative provisions for this further return are either dealt with in Schedule 10 or in other administrative provisions which follow from the application of these returns to that Schedule.

EXPLANATORY NOTE

**CLAUSE 82: LOSS OR DESTRUCTION OF, OR DAMAGE TO,
RETURN ETC**

SUMMARY

1. This clause deals with the loss, destruction or damage of any returns or documents relating to tax. It provides if the returns or documents are lost, destroyed or damaged (as to be illegible or useless).

DETAILS OF THE CLAUSE

2. Subsection (1) gives the scope of the clause. It applies when a return or document has been lost, destroyed or damaged so as to become illegible or useless.

3. Subsection (2) allows the Inland Revenue to treat the return or document as not having been delivered.

4. Subsection (3) allows the Inland Revenue to do in pursuance of this section anything that could be done as if the return or document were never made or provided to them.

5. Subsection (4) provides that if a person is chargeable as a result of anything done under this section he can appeal to the Commissioners for relief on the grounds that he has already paid tax.

BACKGROUND

6. This clause is based on section 112 TMA.

EXPLANATORY NOTE

**CLAUSE 83: FORMAL REQUIREMENTS AS TO ASSESSMENTS,
PENALTY DETERMINATION ETC**

1. This clause provides that errors made by the Inland Revenue do not invalidate assessments, determinations or documents if they are in substantial conformity with the legislation and its intended effect is reasonably ascertainable.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that assessments, determinations, notices or other documents relating to the Inland Revenue's functions under stamp duty land tax must be in a form prescribed by the Board of Inland Revenue and any document in such form is valid and effective.

3. Subsection (2) provides that an assessment, determination or other document purporting to be made under this Part is effective even if it is not in the correct form or contains an error, omission or defect as long as it is "substantially in conformity" with the stamp duty land tax legislation and the intended effect is reasonably ascertainable.

4. Subsection (3) provides that the validity of assessments is not affected by certain mistakes or by any difference between the notice of assessment or determination and the assessment itself.

BACKGROUND

5. It is based on section 114 TMA.

EXPLANATORY NOTE

CLAUSE 84: DELIVERY AND SERVICE OF DOCUMENTS

1. This clause sets out rules for the delivery and service of documents.

DETAILS OF THE CLAUSE

2. Subsection (1) provides that a document or notice under the stamp duty land tax legislation can be sent to his last known place of abode.
3. Subsection (2) says that documents etc can be served by post.
4. Subsection (3) provides that a return or other document can be addressed to
 - In the case of a person, his place of residence or business address,
 - In the case of a company it can be addressed to the registered office, or if a liquidator has been appointed the liquidator's address, any other address provided in regulations made by the Inland Revenue.

BACKGROUND

5. This clause is based on section 115 TMA.