

EXPLANATORY NOTE

CLAUSE 47: E-CONVEYANCING

SUMMARY

1. Clause 45 gives HM Revenue and Customs power to make regulations to facilitate the integration of the stamp duty land tax process into electronic conveyancing initiatives.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 9 of the Public Finance & Accountability (Scotland) Act 2000 (an Act of the Scottish Parliament) so as to clarify that the obligation on the Keeper of the Registers of Scotland to retain sums received by him in the exercise of his function does not apply to payments of stamp duty land tax. This is relevant if electronic conveyancing and registration initiatives result in tax being paid to the Keeper in the first instance; the provision ensures that tax can be passed to HM Revenue and Customs.
3. Subsection (2) amends section 79 Finance Act 2003 to provide that alternative information may be provided to the relevant registrar in place of a Revenue certificate. This is relevant if electronic conveyancing and registration initiatives result in information currently contained on Land Transaction Returns being delivered in the first instance to the relevant registrar, thus making it unnecessary for HM Revenue and Customs to provide a certificate.
4. Subsection (3) provides that regulations made by HM Revenue and Customs may amend the definition of ‘effective date’ in section 119 of the Finance Act 2003. This is relevant if electronic conveyancing and registration initiatives result in a change to the definition of ‘completion’ of a transaction (for example, it is possible that ‘completion’ may not occur until the electronic registration process is completed).
5. Subsection (4) provides that regulations made by HM Revenue and Customs may give the relevant registrar in England and Wales, Scotland, and Northern Ireland, or other specified persons with land registration functions, power to correct obvious errors and

omissions in Land Transaction Returns. This is relevant if electronic conveyancing and registration initiatives result in the initial validation of electronically delivered returns being carried out by a computer system under the control of the registrar.

6. Subsection (5) provides for the HM Revenue and Customs to make regulations that confer administrative functions on a land registrar, and to pay the registrar for undertaking these functions.
7. Subsection (6) defines ‘the land registrar’ for this purpose.
8. Subsection (7) provides for regulations under subsection 5 to be made by statutory instrument subject to annulment in pursuance of a resolution of the House of Commons.

BACKGROUND NOTES

9. It is likely that the integration of the stamp duty land tax process into electronic conveyancing and registration initiatives will also require regulations to be made under section 132 Finance Act 1999 (power to provide for use of electronic communication).

EXPLANATORY NOTE**CLAUSE 48: DISCLOSURE OF INFORMATION
CONTAINED IN LAND TRANSACTION RETURNS****SUMMARY**

1. Clause 48 enables information on stamp duty land tax returns to be available for use by the Valuation Office Agency in England & Wales, and the Valuation and Lands Agency in Northern Ireland, for the purposes of their valuation and other work.

DETAILS OF THE CLAUSE

2. Subsection (1) permits 'relevant information' on Land Transaction Returns to be available for use:
 - by listing officers appointed to compile and maintain council tax valuation lists in England & Wales;
 - as evidence in appeals against entries on council tax valuation lists in England & Wales;
 - by the Commissioner of Valuation for Northern Ireland, for the purpose of facilitating his function of preparing and maintaining valuation lists;
 - by such other persons and for such other purposes as the HM Revenue and Customs may authorise.
3. 'Relevant information' means the information mentioned in paragraph 1(4) of Schedule 10 Finance Act 2003, that is to say, the information that was formerly contained on 'particulars delivered' forms required (in Great Britain) by section 28 Finance Act 1931 and (in Northern Ireland) by section 244 Finance Act 1994. The Treasury has power by regulation to amend the definition of 'relevant information'.
4. Subsections (2) and (3) make consequential amendments.
5. Subsection (4) revokes regulation 3 of the stamp duty land tax (Consequential Amendment of Enactments) Regulations 2005 (2005 No 82) which contains provisions for Northern Ireland that are superseded by this Clause.
6. Subsections (5) and (6) provide for the provisions of the Clause to come into force on such day as the Treasury may by order appoint.

BACKGROUND NOTES

7. Prior to the introduction of stamp duty land tax purchasers and lessees of land were generally required to deliver prescribed particulars of the transaction to the then Inland Revenue. The information was normally delivered on printed forms, commonly called 'particulars delivered' or 'PD' forms.
8. The Inland Revenue was, and HM Revenue and Customs is, under a duty of confidentiality as regards information in its possession relating to the affairs of individual taxpayers. It follows that disclosure of such information is not permitted without statutory authority.
9. In Great Britain information on PD forms was passed to the Valuation Office Agency (an executive agency of the Inland Revenue, now of HM Revenue & Customs). However there was statutory provision (in section 20 Local Government Finance Act 1992, paragraph 8(3)(e) of Schedule 11 Local Government Finance Act 1988 and regulation 37 of the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (1993 No 290)) for onward disclosure:
 - to listing officers appointed to compile and maintain council tax valuation lists in England & Wales;
 - as evidence in appeals against entries on council tax valuation lists in England & Wales.
10. In Northern Ireland there was statutory provision (in section 245(2) Finance Act 1994) for onward disclosure of information on PD forms to the Commissioner of Valuation for Northern Ireland (the head of the office now called the Valuation & Lands Agency, an executive agency of the Department of Finance & Personnel).
11. Stamp duty land tax replaced stamp duty on most land transactions on 1 December 2003. One consequence was that PD forms were no longer required; instead the information formerly contained on PD forms was included as part of the Land Transaction Return.

EXPLANATORY NOTES

CLAUSE 49 AND SCHEDULE 10: STAMP DUTY LAND TAX: MISCELLANEOUS AMENDMENTS

SUMMARY

1. Clause 49 and Schedule 10 make various technical amendments to the legislation on stamp duty land tax in Part 4 Finance Act 2003. These amendments provide for changes to the interaction of various reliefs and block some opportunities for avoidance of the tax.

DETAILS OF THE CLAUSE

2. The Clause introduces the Schedule.

DETAILS OF THE SCHEDULE

3. All statutory references are to Finance Act 2003 unless otherwise specified.
4. Paragraph 1 introduces Part 1 of the Schedule. The measures in Part 1 have effect, broadly speaking, for transactions the effective date of which is on or after 19 May 2005.
5. Paragraph 2 amends section 45. Section 45 deals with sub-sales, assignments and similar transactions where there is an intermediate contracting purchaser and an ultimate purchaser who takes a conveyance. The final sentence of section 45(3) ensures that there is no charge on the intermediate purchaser where the completion or substantial performance of his contract with the vendor takes place in connection with and at the same time as completion or substantial performance of the ultimate purchaser's contract.
6. Paragraph 2 provides that the exemption in the final sentence of section 45(3) does not apply where the transaction with the ultimate purchaser benefits from relief under section 73. This ensures that where the ultimate purchaser benefits from relief under section 73 there is a charge on the initial purchase of the property.

7. Paragraph 2 applies where the effective date of the transaction is after 19 May 2005.
8. Paragraph 3 is consequential on paragraph (6).
9. Paragraph 4 amends the definition of consideration in paragraph 3(2) of Schedule 7 (withdrawal of group relief) where group relief is withdrawn from a transaction which was previously eligible for the relief. It ensures that where the transaction which was subject to group relief was the grant of a lease, any rent passing under the lease is taken into account in determining the chargeable consideration to be taxed. This paragraph has effect where the effective date of the transaction is after 19 May 2005.
10. Paragraph 5 amends paragraph 4 of Schedule 7 (group relief). Paragraph 4 lists cases where group relief is not withdrawn even though paragraph 3 (withdrawal of group relief) applies. Paragraph 4(3) provides that group relief is not withdrawn if the vendor 'leaves the group', and defines what this means. The existing legislation says that the vendor 'leaves the group' if the vendor and purchaser cease to be members of the same group as the purchaser by reason of a transaction relating either to shares in the vendor or to shares in another company that as a result of the transaction ceases to be a member of the same group as the purchaser.
11. Paragraph 5 restricts the second option so that the other company must be above the vendor in the group structure.
12. Paragraph 5 has effect where the effective date of the transaction to which paragraph 3 of Schedule 7 applies is after 19 May 2005.
13. Paragraph 6 inserts new paragraph 4A into schedule 7. New paragraph 4A applies where:
 - a. a transferee claims group relief in respect of a transaction (the 'relevant transaction'), and within three years
 - b. there is a change of control of the transferee ('control' being defined as in section 416 ICTA 1988) (referred to in this Note as the 'triggering event') and
 - c. group relief would not otherwise be withdrawn under paragraph 3 of Schedule 7.
14. In that case the earliest 'previous transaction' (see next paragraph) must be identified. Group relief is then withdrawn if it would have

been withdrawn under paragraph 3 of schedule 7 if the vendor under the relevant transaction had been the vendor under the earliest previous transaction.

15. A 'previous transaction' for this purpose is one where:
 - a. group relief, reconstruction relief or acquisition relief was claimed,
 - b. the effective date of the previous transaction was less than three years before the triggering event, and
 - c. the chargeable interest acquired under the relevant transaction is the same as, comprises, forms part of, or is derived from, the interest acquired under the previous transaction.
16. However a transaction is not a 'previous transaction' if since then there has been a transaction in the interest acquired under that transaction which was not exempt from charge by virtue of group relief, reconstruction relief or acquisition relief.
17. Where two or more transactions effected at the same time form the earliest 'previous transactions' (for example where two chargeable interests merge to form the chargeable interest which is the subject of the relevant transaction) the reference to 'vendor' in relation to the earliest 'previous transaction' is taken to be a reference to the vendors in each of the earliest 'previous transactions'.

EXAMPLES

(1) On 1 January 2006 A transfers Blackacre to B, on 1 January 2007 B transfers Blackacre to C, on 1 January 2008 C transfers Blackacre to D, on 1 January 2009 D transfers Blackacre to E and on 1 July 2009 there is a change of control of E. All the transfers benefit from group relief. It may be that this causes withdrawal of the group relief claimed by E under the existing legislation. If not the earliest 'previous transaction' is the B–C transfer (since the A–B transfer takes place more than three years before the triggering event) and so the group relief claimed by E is withdrawn if E has ceased to be a member of the same group as B (subject to the cases in paragraph 4 of Schedule 7 where group relief is not withdrawn, taking B as vendor).

(2) The facts are the same as in example (1) except that the transfer by C to D did not benefit from group relief. The new measure has

no application here since the non-exempt C–D transfer prevents the B–C transfer being a ‘previous transaction’ and the C–D transfer, being non-exempt, cannot itself be a ‘previous transaction’.

18. This change has effect where the effective date of the relevant transaction is after 19 May 2005.
19. Paragraph 7 is consequential on paragraph 6.
20. Paragraph 8 restricts acquisition relief under paragraph 8 of Schedule 7 to cases where the undertaking (or part of an undertaking) acquired by the acquiring company has as its main activity
 - a. the carrying on of a trade, and
 - b. that trade does not consist wholly or mainly of dealing in land or interests in land.
21. Paragraph 8 applies where the effective date of the transaction is after 19 May 2005.
22. Paragraph 9 is similar to paragraph 4 and amends the definition of consideration in paragraph 9(2) of Schedule 7 (withdrawal of reconstruction of acquisition relief) where group relief is withdrawn from a transaction which was previously eligible for the relief. It ensures that where the transaction, which was subject to reconstruction or acquisition relief was the grant of a lease, any rent passing under the lease is taken into account in determining the chargeable consideration to be taxed. This paragraph has effect where the effective date of the transaction is on or after 19 May 2005.
23. Paragraph 10 amends Schedule 15 (partnerships). It applies where:
 - a. there is a transfer of land into a partnership falling within paragraph 10(1) of Schedule 15;
 - b. and within three years of that transfer;
 - c. either the person who made the transfer withdraws money or money’s worth (other than income profit) from the partnership;

- d. or a person connected with him who has made a loan to the partnership withdraws money or money's worth (other than income profit) from the partnership;
 - e. or a loan made to the partnership by the person who made the transfer or a person connected with him is repaid.
24. In that case the withdrawal or repayment is treated as a land transaction, the partners in the partnership are treated as purchasers and the consideration is taken to be the amount of the withdrawal or repayment. However the consideration cannot exceed the market value of the land transferred in, as reduced by any amount already charged to SDLT.
25. Paragraph 10 has effect where the effective date of the transaction transferring the land into the partnership is after 19 May 2005.
26. Paragraph 11 substitutes a new paragraph 3 of Schedule 16 for the existing paragraph. The rule in the existing paragraph 3 is that the acts and interests of a bare trustee (as defined in paragraph 1(2) of Schedule 16) are attributed to the beneficiary. New paragraph 3 preserves this general rule, but disapplies it where the transaction is the grant of a lease by or to a bare trustee. Such a lease will be chargeable in the same way as if the lessor or lessee (as the case may be) was not a bare trustee.
27. The rule in new paragraph 3 replaces paragraph 11 of Schedule 17A (assignment of exempt lease), so far as it applies to bare trustees.
28. New paragraph 3 applies where the effective date of the grant of the lease is on or after 19 May 2005.
29. Paragraph 12 makes an amendment to paragraph 11 of schedule 17A consequential on the introduction of new paragraph 3 of Schedule 16 by paragraph 11 of this Schedule.
30. Paragraph 13 amends paragraph 15A of Schedule 17A. Paragraph 15A currently charges to tax the variation of a lease where either the term of the lease or the rent is reduced. This measure extends the charge to any variation where consideration other than rent is given by the tenant. An example would be a payment by a tenant to remove onerous covenants.

31. The charge in paragraph 13 of Schedule 17A on an increase in rent resulting from a variation of a lease is unaffected.
32. Paragraph 13 applies where the effective date of the transaction is on or after 19 May 2005.
33. Paragraph 14 introduces new paragraph 18A of Schedule 17A. New paragraph 18A applies where:
 - a. on the grant or assignment of a lease,
 - b. the lessee or assignee makes a 'loan' or pays a 'deposit' to any person, and
 - c. the repayment of the 'loan' or 'deposit' is contingent on anything done or omitted to be done by the lessee or assignee.
34. In that case the cash amount of the 'loan' or 'deposit' is treated as chargeable consideration. This does not apply where the amount of 'loan' and/or 'deposit' does not exceed twice the rent determined by Paragraph 7(3) of Schedule 17A, Finance Act 2003.
35. In determining the charge under new paragraph 18A the rule in paragraph 9(5) of Schedule 5, which excludes the 0 per cent band on consideration other than rent where rent exceeds £600, is disapplied. Thus there is no charge under this measure unless the 'loan' or 'deposit', together with the consideration other than rent for any linked transaction, exceeds £150,000 for non-residential or mixed property or residential property in a disadvantage area or £120,000 for residential property not in a disadvantaged area.
36. Paragraph 15 introduces new subsection (4A) into section 80. The general rule in section 80(4) is that where, as a result of a contingency occurring or not occurring, or a previously uncertain or unascertained amount of consideration becoming ascertained, less tax is payable than has already been paid, the purchaser may claim a repayment of the tax overpaid.
37. New subsection (4A) provides that where the transaction is the grant or assignment of a lease no claim may be made under section 80(4) if:
 - a. there is a charge on a 'loan' or 'deposit' under new paragraph 18A of Schedule 17A and any part of the 'loan' or 'deposit' is repaid,

- b. or for any other refund of consideration where that refund:
- is made under arrangements made in connection with the grant or assignment of a lease, and
 - the refund is contingent on the determination or assignment of the lease, or on the grant of a sub-lease.
38. New paragraph (18A) and new subsection (4A) of section 80 apply where the effective date of the grant of the lease in question is on or after 19 May 2005.
39. Paragraph 16 contains commencement and transitional provisions for the measures in Part 1 of the Schedule. The relevant commencement provision for each measure has been noted above.
40. Sub-paragraphs (6) to (8) contain the transitional provisions:
- a. The measures in Part 1 of the Schedule do not have effect in relation to any transaction effected in pursuance of a contract entered into and substantially performed on or before the ‘specified date’.
- b. In addition the measures in Part 1 of the Schedule do not have effect in relation to any transaction effected in pursuance of any other contract entered into on or before the ‘specified date’ unless:
- there has been a variation or assignment of the contract after the ‘specified date’,
 - the transaction is effected in pursuance of the exercise after the ‘specified date’ of an option or right of pre-emption, or
 - after the ‘specified date’ there is an assignment, sub-sale or other transaction (relating to all or part of the contract) as a result of which a person other than the contracting purchaser becomes entitled to call for a conveyance to him.
41. The ‘specified date’ is 16 March 2005, except for the amendments made by paragraphs 4(a) and 9 (the charge on withdrawal of group relief, reconstruction relief or acquisition relief) where it is 19 May 2005.
42. Paragraph 17 introduces Part 2 of the Schedule. The measures in Part 2 do not have effect until Royal Assent.

43. Paragraph 18 inserts new subsection (6) into section 66 (transactions involving public bodies). It provides that for the purposes in section 66 ‘company’ means a company as defined in section 735(1) of the Companies Act 1985 or Article 3(1) of the Companies (Northern Ireland) Order 1986. This overrides for the purposes of section 66 the general, and wider, definition of ‘company’ in section 100(1).
44. Paragraph 18 has effect for any transaction the effective date of which is on or after the date of Royal Assent.
45. Paragraph 19 inserts new sub-paragraph (4A) into paragraph 2 of Schedule 7 (group relief). New sub-paragraph (4A) provides that group relief is not available if the transaction:
- a. is not effected for bona fide commercial reasons, or
 - b. forms part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.
- ‘Tax’ means stamp duty, income tax, corporation tax, capital gains tax or stamp duty land tax.
46. Paragraph 20 amends paragraph 8 of Schedule 8. First it substitutes a new sub-paragraph (5) for the existing sub-paragraph. This is consequential on the insertion of new sub-paragraph (5C).
47. Second it inserts new sub-paragraphs (5B) and (5C). New sub-paragraph (5B) adds a new, fourth, condition for acquisition relief to be available. The new, fourth condition is that the acquisition:
- a. is effected for bona fide commercial reasons, and
 - b. does not form part of arrangements of which the main purpose, or one of the main purposes, is the avoidance of liability to tax.
- ‘Tax’ means stamp duty, income tax, corporation tax, capital gains tax or stamp duty land tax.
48. New sub-paragraph (5C) defines ‘arrangements’, using the same definition as elsewhere in Schedule 7.
49. Paragraphs 19 and 20 have effect for any transaction the effective date of which is on or after the date of Royal Assent

50. However paragraphs (19) and (20) do not have effect in relation to any transaction effected in pursuance of a contract entered into and substantially performed on or before 16 March 2005.
51. In addition paragraphs (19) and (20) do not have effect in relation to any transaction effected in pursuance of any other contract entered into on or before 16 March 2005 unless:
 - a. there has been a variation or assignment of the contract after 16 March 2005, or
 - b. the transaction is effected in pursuance of the exercise after 16 March 2005 of an option or right of pre-emption, or
 - c. after 16 March 2005 there is an assignment, sub-sale or other transaction (relating to all or part of the contract) as a result of which a person other than the contracting purchaser becomes entitled to call for a conveyance to him.
52. Paragraph 21 amends paragraph 33 of Schedule 15. Paragraph 15 deals with the charge to stamp duty (not stamp duty land tax) on transfers of partnership interests.
53. Sub-paragraph 21(1) introduces the paragraph.
54. Sub-paragraph 21(2) adds new sub-paragraph (1A) to paragraph 33, replacing sub-paragraphs (1)(b) and (2). New sub-paragraph (1A) provides that there is no charge to stamp duty unless the 'relevant partnership property' includes stock or marketable securities.
55. Sub-paragraph 21(3) amends existing sub-paragraph (3).
 - a. Paragraphs (a) and (b) are consequential amendments.
 - b. Paragraph (c) substitutes a new paragraph (b) for the existing paragraph (b). New paragraph (b) provides that for stamp duty purposes the consideration is the 'appropriate proportion' of the net market value (immediately after the transfer) of the stock and marketable securities included in the 'relevant partnership property'.
56. Sub-paragraph 21(4) adds a new sub-paragraph (3A), which defines 'relevant partnership property'. The relevant partnership property, in relation to a transfer, is the partnership property immediately after the transfer, other than any partnership property

which was transferred to the partnership in connection with the transfer.

57. Sub-paragraph 21(5) repeals existing sub-paragraph (4), as the amendment of sub-paragraph (3) makes the reference to ‘excluded proportion’ unnecessary.
58. Sub-paragraph 21(6) amends existing sub-paragraph (5) so that it now defines ‘appropriate proportion’, using the existing definition.
59. Paragraph 21 has effect in relation to any instrument executed on or after the date of Royal Assent.
60. Paragraph 22 contains commencement and transitional provisions for the measures in Part 2 of the Schedule. These have been noted above for each measure.

BACKGROUND NOTES

61. Stamp duty land tax was introduced with effect from 1 December 2003 and replaced stamp duty on documents transferring ownership of UK land. It applies to ‘land transactions’ where there is the transfer of an interest in land in the UK from a vendor to a purchaser.
62. The scope of the tax was extended in 2004 to include transactions in land between partners and their partnerships.

EXPLANATORY NOTE

CLAUSE 50: POWER TO EXTEND EXCEPTIONS RELATING TO RECOGNISED EXCHANGES

SUMMARY

1. Clause 50 provides for regulations that will enable the Treasury to extend the stamp duty and stamp duty reserve tax exemptions for intermediaries and repurchases and stock lending to members of a specified Multilateral Trading Facility (MTF) as defined by the EU Markets in Financial Instruments Directive (MiFID) - Directive 2004/39/EC, but which is not a recognised exchange as defined in the 1986 Finance Act.

DETAILS OF THE CLAUSE

2. Subsection (1) provides the Treasury with a regulatory power to extend the exemptions listed in subsection (2) to any market that, although not a recognised exchange, is a multilateral trading facility, or to any market that (assuming compliance with the provisions of Title II of the MiFID Directive) would be such a facility.
3. Subsection (2) states that the stamp duty and stamp duty reserve tax exemptions affected are those for sales to intermediaries and for repurchases and stock lending.
4. Subsection (3) defines the MiFID Directive, ‘multilateral trading facility’ and ‘recognised exchange’ for the purposes of the section.
5. Subsection (4) enables the exemptions to be applied subject to any necessary adaptations.
6. Subsection (5) provides that the words “(or assuming compliance with the provisions of Title II of the Directive (authorisation and operating conditions), would be such a facility)” in subsection (1)(b) shall cease to have effect on a day appointed by Treasury order.
7. Subsection (6) provides that section 117 of Finance Act 2002 shall cease to have effect on a day appointed by Treasury order.

8. Subsection (7) provides that the power to make regulations or an order under this section is exercisable by statutory instrument.
9. Subsection (8) provides that a statutory instrument containing regulations under this section, or an order under subsection (5), is subject to annulment by a resolution from the House of Commons.

BACKGROUND NOTES

10. The stamp duty and stamp duty reserve tax exemptions for intermediaries and for repurchases and stock lending are presently only available to members of EEA exchanges, recognised foreign exchanges, or any market that is not a recognised exchange but is prescribed by order under Section 118(3) Financial Services and Markets Act 2000 (the “market abuse” provisions). MTFs do not fall within any of the above classes of a “recognised exchange” as defined in the 1986 Finance Act.
11. Section 117 of FA 2002 extended the exemptions to markets prescribed under sections 118(3) of the Financial Services and Markets Act 2000.