STATUTORY INSTRUMENTS

2005 No. 1868

STAMP DUTY LAND TAX

The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005

Made - - - -	*11th July 2005*
Laid before the House of Commons	*11th July 2005*
Coming into force - -	*1st August 2005*

The Treasury, in exercise of the powers conferred upon them by sections 306(1)(a) and (b) and 318 of the Finance Act 2004(**a**) make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005 and shall come into force on 1st August 2005.

(2) In these Regulations—

"chargeable interests" has the meaning given by section 48 of the Finance Act 2003(**b**);

"residential" and "non-residential property" have the meanings given in section 116 of the Finance Act 2003; and

a reference (without more) to a numbered section is a reference to the section of the Finance Act 2004 which is so numbered.

(3) For the purposes of these Regulations, section 839 of the Income and Corporation Taxes Act 1988(**c**) applies to determine whether persons are connected.

Prescribed description of arrangements in relation to stamp duty land tax

2.—(1) For the purposes of Part 7 (disclosure of tax avoidance schemes) the arrangements specified in paragraph (3) are prescribed in relation to stamp duty land tax.

(2) In this regulation—

"the applicable value" means the aggregate market value of all of the chargeable interests in non-residential property subject to the arrangements;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs (see section 1 of the Commissioners for Revenue and Customs Act 2005); and

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(**a**) 2004 c. 12. Section 318 is cited because of the meaning it ascribes to "prescribed".
(**b**) 2003 c. 14. Section 48(7) was inserted by section 297(3) and paragraph 4(2) of Part 1 of Schedule 39 to the Finance Act 2004.
(**c**) 1988 c. 1. Section 839 was amended by paragraph 20 of Schedule 17 to the Finance Act 1995 (c. 4).

"market value" shall be construed in accordance with section 118 of the Finance Act 2003, and for the purposes of ascertaining that value, all chargeable interests held by the same person or connected persons shall be taken into account.

(3) The arrangements are those—

(a) whose subject matter does not consist wholly of residential property;

(b) in respect of which the applicable value is at least £5,000,000 at the time any requirement to notify would (but for this sub-paragraph) arise under section 308, 309 or 310 (as the case may be), and

(c) are not excluded by virtue of the provisions of the Schedule to these Regulations.

(4) If a promoter does not know whether proposals will result in arrangements, the subject matter of which will consist at least in part of non-residential property, it shall be assumed, for the purposes of these Regulations, that the subject matter of any resulting arrangements will so consist.

(5) If a promoter makes a notifiable proposal available generally, it shall be assumed that the applicable value is £5,000,000 or more.

(6) In any case where—

(a) a promoter makes available a proposal for arrangements in circumstances where he knows the identity of at least one of the persons who it is proposed should be a party to the arrangements;

(b) a promoter becomes aware of a transaction entered into in pursuance of arrangements of the kind described in sub-paragraph (a); or

(c) a person becomes a party to any transaction forming part of notifiable arrangements; and liable to comply with—

(i) section 309 (duty of person dealing with promoter outside the United Kingdom); or

(ii) section 310 (duty of parties to notifiable arrangements not involving promoter);

if the person under a duty to provide the Commissioners with prescribed information does not know the applicable value, it shall be assumed to be at least £5,000,000.

Tom Watson
Vernon Coaker

11th July 2005 — Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 2(3)(c)

Excluded Arrangements

Arrangements are excluded from being prescribed arrangements for the purposes of these Regulations if they —

(a) comprise one or more of steps A to F listed below (subject to Rules 1 and 2 which specify arrangements involving combinations of those steps which are not excluded arrangements); but

(b) do not include any step, which is necessary for the purpose of securing a tax advantage, other than one listed below.

Rule 1

Arrangements involving Steps B, D, E and F are excluded arrangements unless rule 2 applies.

Rule 2

Arrangements are not excluded arrangements if they—

(a) include all, or at least two of, steps A, C and D; or

(b) involve more than one instance of step A, C or D.

The steps are as follows.

Step A: Acquisition of a chargeable interest by special purpose vehicle

The acquisition of a chargeable interest in land by a company created for that purpose ("a special purpose vehicle").

Step B: Claims to relief

Making—

(a) a single claim to relief under any of the following provisions of the Finance Act 2003—

(i) section 57A (**a**),(sale and leaseback arrangements);

(ii) section 60 (compulsory purchase facilitating development);

(iii) section 61 (compliance with planning obligation);

(iv) section 64 (demutualisation of building society);

(v) section 64A (**b**) (initial transfer of assets to trustees of unit trust scheme);

(vi) section 65 (incorporation of limited liability partnership);

(vii) section 66 (transfers involving public bodies);

(viii) section 67 (transfer in consequence of reorganisation of parliamentary constituencies);

(ix) section 69 (acquisition by bodies established for national purposes);

(x) section 71 (certain acquisitions by registered social landlords);

(xi) section 74 (collective enfranchisement by leaseholders);

(xii) section 75 (crofting community right to buy);

(xiii) Schedule 6 (disadvantaged areas relief);

(xiv) Schedule 6A (**c**)(relief for certain acquisitions of residential property);

(xv) Schedule 7 (group relief and reconstruction acquisition reliefs);

(xvi) Schedule 8 (charities relief); or

(xvii) Schedule 9 (right to buy, shared ownership leases etc.);

(b) one or more claims to relief under any one of the following provisions of the Finance Act 2003—

(i) section 71A (**d**) (alternative property finance: land sold to financial institution and leased to individual);

(ii) section 72 (**e**) (alternative property finance in Scotland: land sold to financial institution and leased to individual);

(iii) section 72A(**f**) (alternative property finance in Scotland: land sold to financial institution and individual in common); or

(iv) section 73 (alternative property finance: land sold to financial institution and resold to individual)(**g**).

(**a**) Section 57A was inserted by paragraph 16 of Part 2 of Schedule 39 to the Finance Act 2004.
(**b**) Section 64A was inserted by paragraph 18 of Part 2 of Schedule 39 to the Finance Act 2004.
(**c**) Schedule 6A was inserted by paragraph 17(2) of Part 2 of Schedule 39 to the Finance Act 2004.
(**d**) Section 71A was inserted by paragraph 2 of Schedule 8 to the Finance Act 2005 (c. 7).
(**e**) Section 72 was amended by paragraph 3(1) and (6) of Schedule 8 to the Finance Act 2005.
(**f**) Section 72A was inserted by paragraph 4 of Schedule 8 to the Finance Act 2005.
(**g**) Section 73 was amended by paragraph 5(2) of of Schedule 8 to the Finance Act 2005.

Step C: Sale of shares in special purpose vehicle

The sale of shares in a special purpose vehicle, which holds a chargeable interest in land, to a person with whom neither the special purpose vehicle, nor the vendor, is connected.

Step D: Not exercising election to waive exemption from VAT

No election is made to waive exemption from value added tax contained in paragraph 2 of Schedule 10 to the Value Added Tax Act 1994(**a**) (treatment of buildings and land for value added tax purposes).

Step E: Transfer of a business as a going concern

Arranging the transfer of a business, connected with the land which is the subject of the arrangements, in such a way that it is treated for the purposes of value added tax as the transfer of a going concern.

Step F: Undertaking a joint venture

The creation of a partnership (within the meaning of paragraph 1 of Schedule 15 to the Finance Act 2003) to which the property subject to a land transaction is to be transferred.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe arrangements which enable or might be expected to enable any person to obtain a tax advantage in relation to stamp duty land tax, and which a promoter is required to notify to the Inland Revenue.

Regulation 1 provides for the citation, commencement and interpretation of these Regulations.

Regulation 2 prescribes arrangements in relation to stamp duty land tax which must be notified to HM Revenue & Customs under Part 7 of the Finance Act 2004 (c. 12). The duty to notify does not arise in the cases specified in the Schedule to the Regulations, which details certain steps which, alone or (subject to Rules to 1 to 4 of that Schedule) in combination do not constitute prescribed arrangements for the purposes of the Regulations.

These Regulations impose new costs on business. A regulatory impact assessment is available on HM Revenue & Customs website (www.hmrc.gov.gsi.uk).

(**a**) 1994 c. 16. Paragraph 2 has been amended by sections 36 and 37 of, and Part IV(2) of Schedule 18 to, the Finance Act 1997 (c. 16), article 2(a) of S.I. 1994/3013, article 3 of S.I. 1995/279, article 2(a) of S.I. 1997/51, articles 2 and 4 of S.I. 1999/593 and articles 2 and 4 of S.I. 2004/778.

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