

## THE SDLT REGIME IN DETAIL

of the more expensive property and was paid by the person acquiring the more expensive property.<sup>192</sup> This relief was not carried over into SDLT and the general rule is that tax is charged on each leg of an exchange as a separate transaction.

The only vestige of the stamp duty exchange relief is in paragraphs 1 and 2 of Schedule 6A which provide relief for various exchanges involving residential property. For the details of this relief see section 3.8.1 below.

### **1.9.1. Exchanges – the provisions in detail**

Section 47 provides that where a land transaction is entered into by a purchaser (alone or jointly) wholly or partly 'in consideration of' another land transaction being entered into by him (alone or jointly) as vendor, each transaction is taxed as if it were distinct and separate from the other. Each purchaser must complete a separate land transaction return for his transaction. Merely reserving or excepting right or interests from a transfer or a lease does not turn a sale or grant into an exchange<sup>193</sup>.

Section 47(2) provides that a transaction is treated as entered into by the purchaser wholly or partly in consideration of another land transaction being entered into by him as vendor (and thus being an exchange) in any case where an obligation to give consideration for a land transaction that a person enters into as purchaser is met wholly or partly by way of that person entering into another transaction as vendor. This catches the case where an exchange is structured as a sale.

HMRC's view of the operation of the provisions is extremely wide.<sup>194</sup> Section 47 can apply even though the parties are not identical and its application should be considered wherever parties to a transaction each acquire interests in or rights over land. Exchanges are always governed by section 47 even where additional consideration other than the entering into another land transaction is present.

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<sup>192</sup> For stamp duty purposes a transaction could often be structured as a sale of the more expensive property for a consideration consisting of the other property plus a cash amount. Where a transaction was properly documented as a single sale in that way, section 241 FA 1994 did not apply and the transfer of the consideration property was chargeable only to £5 fixed duty as a 'conveyance of any other kind'. This was because there was no 'sale' of the consideration property.

<sup>193</sup> See SDLTM00270

<sup>194</sup> See article in HMRC SDLT Technical News Issue 5 (August 2007) which is to be incorporated in SDLTM and which gives guidance on HMRC's interpretation of 'in consideration of' in section 45

Although each leg of an exchange is treated as a separate land transaction by reason of section 47(1), HMRC's view<sup>195</sup> was that they were linked transactions where the parties were 'connected' with each other so that the values had to be aggregated in order to ascertain the appropriate rate of SDLT<sup>196</sup>. For example, if land worth £220,000 was exchanged between connected parties for land worth £330,000, SDLT would be due at 4% on £520,000.

Legislation was introduced in FA 2007 to provide that where an exchange of property takes place between connected persons, the two legs are not linked with each other for determining the rate of SDLT. The provision<sup>197</sup> applies to any land transaction which is part of an exchange taking place on or 19 July 2007.<sup>198</sup> This change means that, if land worth £220,000 is exchanged between connected parties for land worth £330,000 the two properties are treated separately, so SDLT is due at 1% on the property worth £220,000 and 3% on the other.

Section 47 would cover a surrender and re-grant and, in a case where the relief provided by paragraph 16 of Schedule 17<sup>199</sup> is not available, the transaction will be taxed as an exchange.

The exchange provisions do not apply where an exchange or a sale and leaseback takes place which involves certain public bodies<sup>200</sup>.

Conversion of a lease into a commonhold unit under section 9(3)(f) of the Commonhold and Leasehold Reform Act 2002 is not an exchange because the lease is extinguished by operation of law - the lease is not exchanged for the commonhold unit.<sup>201</sup>

### **1.9.2. Exchanges – application of the rules to partitions<sup>202</sup>** (Paragraph 6 Schedule 4)

In principle section 47 also covers partitions. A partition involves jointly owned land where there is the acquisition of a chargeable interest in exchange for the giving up of another. However SDLT will not be chargeable on a simple partition where property is divided according to the parties' existing

<sup>195</sup> See Example 3 at SDLTM04020a

<sup>196</sup> By reason of section 108 – see 2.1.1 below.

<sup>197</sup> Section 76(1) and (3) FA 2007 amending section 47(1) with effect from 19 July 2007

<sup>198</sup> The date of Royal Assent to FA 2007

<sup>199</sup> See 1.8 above

<sup>200</sup> Paragraph 17 Schedule 4 - see 3.20 below

<sup>201</sup> See SDLTM00285 for guidance on the SDLT treatment of commonholds.

<sup>202</sup> See example at SDLTM04030a