

A representative partner may be nominated by a majority of partners to do anything required to be done by the responsible partners, but such nomination has effect only after notice of the nomination has been given to HMRC.⁶⁴¹ The nomination can be revoked but the revocation is effective only after notice has been given to HMRC⁶⁴².

4.5. Partnership transactions to which special provisions apply ('extraordinary transactions')

(Part 3 Schedule 15)⁶⁴³

4.5.1. Application of the rules for extraordinary transactions

The special rules in Part 3 of Schedule 15 apply to the partnership transactions listed in paragraph 9 of Part 3. These transactions are:

- the transfer of a chargeable interest to a partnership⁶⁴⁴;
- the transfer of an interest in a partnership⁶⁴⁵; and
- the transfer of a chargeable interest from a partnership⁶⁴⁶.

Paragraph 9 also provides that references to a 'transfer' of a chargeable interest for the purposes only of Part 3 Schedule 15 include:

- the grant or creation of a chargeable interest
- the variation of a chargeable interest
- the surrender, release or renunciation of a chargeable interest.

This extended meaning applies for Part 3 of Schedule 15 only.

Except as charged under paragraphs 10, 14 or 17 the acquisition of an interest in a partnership is not a chargeable transaction for SDLT purposes, notwithstanding that the partnership property includes land⁶⁴⁷.

4.5.2. Transfer of a chargeable interest to a partnership

(Paragraphs 10 to 12 Schedule 15)

Where there is a transfer by one or more (existing or incoming) partners, or a person connected with them, of a chargeable interest to a partnership the aim is

penalty or interest on a penalty for such a land transaction could not be recovered from such an incoming partner.

⁶⁴¹ Paragraph 8(4) Schedule 15

⁶⁴² Ibid.

⁶⁴³ Substituted by section 304 and Schedule 41 FA 2004 for partnership transactions with an effective date effect after 22 July 2004

⁶⁴⁴ Paragraph 10 Schedule 15 – see 4.5.2 below

⁶⁴⁵ Paragraphs 14, 17, 31 and 32 Schedule 15 – see 4.5.3 below

⁶⁴⁶ Paragraph 18 Schedule 15 – see 4.5.4 below

⁶⁴⁷ Paragraph 29 Schedule 15

to charge that proportion of the market value effectively transferred to the other partners (that is, the proportion of the market value of the contributed property that is attributable to the shares of the other partners immediately after the contribution). The detail of the charging provisions is set out below.

Before FA 2006 there was also a charge on any actual consideration paid or given on a transfer in to a partnership (e.g. where debt was assumed by the partnership). However, HMRC acknowledged that the charging formula in its then form was both complicated and prone to producing unintended and excessive charges to SDLT. Accordingly, HMRC simplified the formula and now rely on various anti-avoidance provisions to ensure that the simplification does not result in the use of partnerships for SDLT planning. Further changes to the charging provisions were introduced from 6 December 2006. The main changes are identified below.

There is a transfer of a chargeable interest to a partnership whenever a chargeable interest becomes 'partnership property'.⁶⁴⁸

Partnership interests of 'individuals' connected with the transferor are assumed to belong to the transferor. Somewhat confusingly, an 'individual' includes a corporate trustee in certain circumstances⁶⁴⁹.

The charging provisions apply whether the transfer is in connection with the formation of a partnership or is a transfer to an existing partnership.

Partnership property

'Partnership property' is an interest or right held by or on behalf of the partnership or the members of the partnership for the purposes of the partnership business.⁶⁵⁰ The test of partnership property is therefore two-fold:

- (1) It must be held by or on behalf of the partnership or all of the members of the partnership (not a single member or some of the members); and
- (2) It must be held for the purposes of the partnership business (not merely used for the purposes of that business)⁶⁵¹.

Therefore, in practice, a chargeable interest which is partnership property by virtue of section 20 of the Partnership Act 1890 is likely to be partnership property for SDLT purposes. So a chargeable interest acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the

⁶⁴⁸ Paragraph 35 Schedule 15

⁶⁴⁹ When calculating the SLP pursuant to paragraph 12 Schedule 15

⁶⁵⁰ Paragraph 34(1) Schedule 15

⁶⁵¹ Draft SDLTM35100 and the third paragraph of draft SDLTM33400 no longer represent HMRC's views on paragraph 34(1) – see article in .SDLT Technical News Issue 5 (August 2007)

THE SDLT REGIME IN DETAIL

course of the partnership business, will be partnership property for SDLT purposes. However the mere fact that a business is carried on on property belonging to either one or more partners (but not all partners) does not make the chargeable interest held by that partner or those partners partnership property⁶⁵².

The detail of the charge

(Paragraph 10 Schedule 15⁶⁵³)

Where:

- (a) an existing partner transfers a chargeable interest to a partnership;
- (b) a person transfers a chargeable interest to a partnership in return for an interest in the partnership; or
- (c) a person 'connected with'⁶⁵⁴ either a partner or with a person who becomes a partner as a result of, or in connection with, the transfer transfers a chargeable interest to the partnership,

the chargeable consideration for the transfer, subject to the provisions of paragraph 13 of Schedule 15⁶⁵⁵, is:

$MV \times (100 - SLP)\%$

Where:

MV is the market value of the interest transferred.

In determining the market value of a lease for the purposes of paragraph 10, an obligation of the tenant under the lease is to be taken into account only if it is one of those listed in paragraph 10(1) Schedule 17A as not counting as chargeable consideration or it is an obligation to make a payment to a person.⁶⁵⁶

⁶⁵² With acknowledgement to the Stamp Taxes Practitioners' Group for this formulation.

⁶⁵³ As amended by FA 2006 for transactions with an effective date on or after 19 July 2006.

⁶⁵⁴ The provisions of section 839 ICTA (connected persons) apply with the omission of sub-section (4) (partners connected with each other) (paragraph 39 Schedule 15).

⁶⁵⁵ The legislation still refers to paragraph 13 (Transfer of chargeable interest to a partnership consisting wholly of bodies corporate) even though this provision was removed from Schedule 15 by the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237) with effect from 6 December 2006. Paragraph 13 was again repealed by FA 2007 in respect of transfers occurring on or after 19 July 2007. The repeal by FA 2007 was in relation to paragraph 13 as it stood before amendment by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237). Section 72(17) FA 2007 provides that the transitional provisions of sub-paragraphs (8) to (10) of paragraph 2 of the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 continue to have effect.

⁶⁵⁶ Paragraph 38 Schedule 15

SLP is the sum of the lower proportions determined in accordance with paragraph 12 (see *Determining the SLP* below). In the simple case where a partner is the 100% owner of a land asset before the transfer to a partnership and he is not connected with any of the other partners the SLP will be the transferor's partnership share after the transfer.

Paragraph 10 as originally enacted by FA 2004 gave rise to a charge which was partly based on a proportion of the market value of the land and partly based on 'actual consideration' given by the transferee⁶⁵⁷. In practice it was not always clear what constituted 'actual consideration'. For all transactions with an effective date on or after 19 July 2006, FA 2006 removed the references to 'actual consideration' in paragraph 10 (and paragraph 18) so that the charge is now based solely on a proportion of market value. In a case where rent forms all or part of the consideration for the transfer of a chargeable interest to a partnership, there is a substituted computation for the chargeable consideration⁶⁵⁸.

Example: Transfer of land into a partnership

A transfers land worth £1,000,000 to a partnership consisting of himself and B (an unconnected person for the purposes of Schedule 15). B has (and retains) a 60% share in the partnership and the partnership pays nothing to A. The SDLT charge will be calculated as:

$$\begin{aligned} \text{Chargeable consideration} &= \text{MV} \times (100 - \text{SLP})\% \\ &= \text{£1 m} \times (100 - 40)\% = \text{£1 million} \times 60\% = \text{£600,000.} \end{aligned}$$

If A had received consideration the SDLT charge would still have been on 60% of market value.

If, in the case where the land was transferred to the partnership by A, A had taken a proportionately increased partnership share (from 40% to 52%), the SDLT charge would have been based on 48% of market value = £480,000. This reflects the fact that A remained the owner of 52% of the property transferred, but had disposed of a 48% share in it.

Responsible partners

(Paragraph 10(7) Schedule 15)

The responsible partners on a transfer to a partnership are those who were partners immediately before and after the transaction and any person

⁶⁵⁷ As did paragraph 18 on transfers out of a partnership

⁶⁵⁸ See 'Chargeable consideration includes rent' below

THE SDLT REGIME IN DETAIL

becoming a partner as a result of or in connection with the transfer. The former relates to a contribution to an existing partnership whilst the latter includes a contribution on formation.

Determining the SLP

(Paragraph 12 Schedule 15⁶⁵⁹)

There are five steps to determining the SLP. In a simple case, the SLP is broadly the proportion of the interest in land retained by the transferor and certain of those connected with him after the transfer.

Step One: Identify the 'relevant owner' or owners.

A 'relevant owner' is a person who immediately before the transaction was entitled to a proportion of the chargeable interest and immediately after the transaction is a partner or is 'connected with' a partner.

Step Two: For each relevant owner, identify the 'corresponding partner' or partners.

A person is a 'corresponding partner' in relation to a relevant owner if immediately after the transaction he is a partner and he is either the relevant owner or is an 'individual' 'connected with'⁶⁶⁰ the relevant owner.

In applying the rules in paragraph 12 to determine the SLP the provisions of section 839 ICTA 1988 (connected persons) apply with the omission of sub-section (3)(c) (trustee connected with a body corporate which is connected with a settlement) and sub-section (4) (partners connected with each other). The disapplication of the connected persons test in section 839(3)(c) by FA 2007 is intended to block a disclosed⁶⁶¹ SDLT scheme which relied on a purchaser engineering a connection between a vendor and the partners in a property partnership created by trustees for the purchaser and into which the vendor sold the property.

For the purposes of *Step Two* a company is to be treated as an 'individual' connected with the relevant owner in so far as it owns property as trustee and is connected with the relevant owner only because of section 839(3) ICTA 1988

⁶⁵⁹ As amended by FA 2007 which replaced the amendments to paragraph 12 Schedule 15 made with effect from 6 December 2006 by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237) with effect from 19 July 2007, subject to transitional provisions.

⁶⁶⁰ Paragraph 39 Schedule 15 as amended by FA 2007 with effect for transfers occurring on or after 19 July 2007. This definition of 'connected' also applies for the purposes of determining the SLP on a transfer out of a partnership under paragraph 20 Schedule 15.

⁶⁶¹ For the rules on disclosure of SDLT avoidance schemes see Section 5.1 below

(trustee of settlement connected with settlor etc.)⁶⁶². This allows a relevant owner to contribute land to a property partnership in which a corporate trustee of land (under a trust created by him) is the other partner without generating an SDLT charge. Other than a corporate trustee, only partners connected with a relevant owner who are individuals can be corresponding partners. This means that even where a corporate partner is wholly owned by a partner an SDLT charge may arise in respect of part of the interest transferred to that corporate partner although a form of group relief may be available⁶⁶³.

Where the contributing partner is a company it will be a corresponding partner for the purposes of calculating the SLP.

If there are no corresponding partners the SLP is nil (and the whole of the market value of the interest transferred will be chargeable).

Step Three: For each relevant owner, find the proportion of the chargeable interest to which he was entitled immediately before the transaction.

Apportion that proportion between any one or more of the relevant owner's corresponding partners. There is no set method of performing this apportionment and it should be carried out to give the best result (as it is the lower of this apportioned amount and the partner's share immediately after the transaction that is to be taken into account – see *Step Four* below).

Step Four: Find the 'lower proportion' for each person who is a corresponding partner in relation to one or more relevant owners. This will include the proportion attributable to the relevant owner if he is also a corresponding partner.

The 'lower proportion' is the lower of:

- (a) the proportion of the chargeable interest attributable to that partner (at *Step Three*); and
- (b) the partner's partnership share immediately after the transaction.

It is income entitlement (and not capital share) which is used to measure partnership share⁶⁶⁴. This is surprising given that the SDLT charge relates to what would normally be a capital asset of the partnership.

If the partner in question is a corresponding partner in relation to only one relevant owner, the proportion attributable to him for the purposes of (a) is the

⁶⁶² See footnote 659 above

⁶⁶³ Pursuant to paragraph 27A Schedule 15 – see *Transfer of chargeable interest to a partnership that consists of or includes companies* below

⁶⁶⁴ Paragraph 34(2) Schedule 15)

THE SDLT REGIME IN DETAIL

proportion (if any) of the chargeable interest apportioned to him at *Step 3* in respect of that owner.

If the partner in question is a corresponding partner in relation to more than one relevant owner, the proportion attributable to him for the purposes of (a) is the sum of the proportions (if any) of the chargeable interest apportioned to him at *Step 3* in respect of each of those owners.

Step Five: Add together the lower proportions of each person who is a corresponding partner in relation to one or more relevant owners.

The result is the SLP.

Example of SLP calculation:

A, B, C and D are in equal partnership. B and C but not D are connected to A for the purposes of paragraph 10 of Schedule 15. A transfers land to the partnership worth £1,000,000, for which B and C each pay £100,000 and D pays £400,000.

Step One: A is the 'relevant owner'.

Step Two: The 'corresponding partners' are A, B and C.

Step Three: The proportion of the chargeable interest to which A was entitled immediately before the transaction was 100% apportioned equally between A, B and C.

Step Four: The lower proportion is 25% for each of A, B and C as their partnership share of 25% is lower than their proportion of the chargeable interest immediately before the transfer (which was 33.3%).

Step Five: The SLP is therefore 25% + 25% + 25% = 75%.

The chargeable consideration is:

$MV \times (100 - \text{SLP})\%$

$£1,000,000 \times (100 - 75)\% = £250,000$

Note: D could be a company wholly-owned by A and 25% of the value transferred would still be chargeable whereas if D was an individual connected with A the SLP would be 100% and there would be no chargeable consideration.

Chargeable consideration includes rent

(Paragraph 11 Schedule 15⁶⁶⁵)

In a case where rent forms all or part of the consideration for the transfer of a chargeable interest to a partnership (as it may be on the grant of a lease or agreement for lease, but not on an assignment of an existing lease (unless it is deemed to be a grant)), there is a substituted computation for determining the chargeable consideration. In effect, it becomes the Relevant Chargeable

⁶⁶⁵ As amended by FA 2006 for transactions with an effective date on or after 19 July 2006.

Proportion (RCP) of the NPV of the rent (calculated in accordance with Schedule 5 subject to modifications set out in paragraphs (2A) to (2C) of paragraph 11).

The RCP is $(100 - \text{SLP})\%$ so that where a lease is contributed only the proportion of the NPV of rent attributable to the other unconnected parties is charged to SDLT. SLP is determined in accordance with paragraph 12.

Paragraph 10 Schedule 5 charges to SDLT the proportion of any market value (after allowing for the obligation to pay rent taxed under paragraph 10) that is attributable to unconnected parties and this amount is treated as consideration other than rent for the purpose of the rule in paragraph 9 Schedule 5 so that the 0% band is not available for other chargeable consideration where the average annual rent exceeds £600.

Transfer from a partnership to a partnership

Where there is a transfer of a chargeable interest from a partnership to a partnership and the transfer is within both the provision for a transfer to a partnership (in paragraph 10) and from a partnership (in paragraph 18), and none of the chargeable consideration is rent, the chargeable consideration is taken to be whichever is the greater under the two provisions. If the whole or part of the chargeable consideration is rent, the chargeable consideration is taken to be whichever is the greater under paragraphs 11 and 19⁶⁶⁶.

Transfer of chargeable interest to a partnership that consists of or includes companies

(Paragraph 13⁶⁶⁷ and paragraph 27A⁶⁶⁸ Schedule 15)

Paragraph 13 was removed from Schedule 15 by the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 with effect from 6 December 2006⁶⁶⁹.

⁶⁶⁶ Paragraph 23 Schedule 15

⁶⁶⁷ Paragraph 13 was repealed by FA 2007 for transfers occurring on or after 19 July 2007. The repeal is in relation to this paragraph as it stood before the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237) which repealed paragraph 13 with effect from 6 December 2006. The repeal by FA 2007 replaces the change made by the 2006 regulations, subject to transitional provisions in section 72(17) FA 2007.

⁶⁶⁸ Paragraph 27A was inserted by FA 2007 for transfers occurring on or after 19 July 2007. The amendment is in relation to Schedule 15 as it stood before the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237) which inserted an identical paragraph 27A with effect from 6 December 2006. The repeal by FA 2007 replaces the amendment made by the 2006 regulations, subject to transitional provisions in section 72(17) FA 2007.

THE SDLT REGIME IN DETAIL

Before repeal, the provisions of paragraph 13 had the result that, in a case where the transferee partnership consisted entirely of corporate partners and the SLP was 75 or more (either because the contributing partner retained that interest through its partnership share or did so when its interest after the contribution is aggregated with other group company partners), there was no reduction for prior ownership or participation by connected companies and, on a transfer to such a partnership, the chargeable consideration in paragraph 10 was taken to be equal to the full market value of the interest transferred. There was a corresponding adjustment to paragraph 11 where the chargeable consideration included rent.

From 6 December 2006, where the corresponding partners are part of the same corporate group as the transferor, the transferee partners may be able to claim a type of group relief pursuant to new paragraph 27A in order to benefit from relief from the charge, with the possibility of a clawback of that relief should they leave the group within three years. This relief is not available on a transfer of land out of a partnership that consists of or includes companies.

Paragraph 27A provides that, in a case where:

- (1) in calculating the SLP under paragraph 12, a company would have been a corresponding partner of a relevant owner but for the fact that for the purposes of *Step Two* connected persons are included only if they are individuals⁶⁷⁰, and
- (2) the connected company and the original owner are members of the same group

the charge in respect of the transaction (chargeable under paragraph 10) is reduced to the amount that would have been payable had the connected company been a corresponding partner of the original owner for the purposes of calculating the SLP.

The SDLT group relief provisions are then applied to treat the SLP reduction as a form of group relief⁶⁷¹ which is subject to clawback under paragraph 3 of Schedule 7 if:

⁶⁶⁹ Paragraph 13 was repealed by FA 2007 (see footnote 667 above). Section 72(17) FA 2007 provides that the transitional provisions of sub-paragraphs (8) to (10) of paragraph 2 of the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 continue to have effect.

⁶⁷⁰ For the purposes of *Step Two* a company is to be treated as an individual connected with the relevant owner in so far as it owns property as trustee and is connected with the relevant owner only because of section 839(3) ICTA 1988 (trustee of settlement connected with settlor etc.)

⁶⁷¹ Paragraph 27A(3) Schedule 15.

- (1) the corporate partner ceases to be a member of the same group as the transferor before the end of three years beginning with the date of the transfer (or at any time in pursuance of or in connection with arrangements made before the end of the period); and
- (2) at that time the land is held by the partnership.

The amount of tax chargeable if relief is clawed back is the SDLT that would have been paid but for the group relief under paragraph 27A if the chargeable consideration had been the market value of the land or an 'appropriate proportion' of the SDLT that would have been payable. An 'appropriate proportion' means the proportion to which the corporate partner is entitled at the time of de-grouping to share in the income profits of the partnership⁶⁷².

Relief under paragraph 27A is claimed by completing the land transaction return (form SDLT1), checking Box 9 to show that a relief is being claimed and inserting code 28 ('Other relief'). *Not* code 12 ('Group relief').

Anti-avoidance: withdrawal of money or money's worth from partnership after transfer of chargeable interest

(Paragraph 17A Schedule 15)⁶⁷³

F(No.2)A 2005⁶⁷⁴ introduced an anti-avoidance provision, new paragraph 17A, into Schedule 15 to impose an SDLT charge where there has been an transfer of a chargeable interest to a partnership chargeable under paragraph 10 (i.e. a transfer of a chargeable interest by a new or existing partner or a person 'connected with⁶⁷⁵ him) and within three years of that transfer a 'qualifying event' occurs.

A 'qualifying event' occurs where:

- (1) a 'relevant person' withdraws money or money's worth from the partnership (which does not represent income profit) by:
 - a. withdrawing capital;
 - b. reducing his partnership interest; or
 - c. ceasing to be a partner.
- (2) in the case where the 'relevant person' has made a loan to the partnership:
 - a. there is a repayment (to any extent) by the partnership of the loan; or

⁶⁷² Paragraph 27(3) and (4) Schedule 15.

⁶⁷³ Inserted by paragraph 10 Schedule 10 F(No.2)A 2005 where the effective date of the transaction transferring the chargeable interest to the partnership is on or after 20 May 2005 subject to transitional provisions in paragraph 16(7) Schedule 10.

⁶⁷⁴ Section 49 and Schedule 10 paragraphs 1 and 10.

⁶⁷⁵ As defined in paragraph 39 Schedule 15.

THE SDLT REGIME IN DETAIL

- b. there is a withdrawal by that person of money or money's worth which does not represent income profit.

A 'relevant person' is broadly the transferor or a connected person⁶⁷⁶.

The qualifying event is deemed to be a land transaction chargeable to SDLT. The partners are deemed to be the purchasers under this land transaction and paragraphs 6 to 8 of Schedule 15 are applied so that they are jointly and severally liable for the SDLT and to make returns.

The chargeable consideration for the transaction is taken to be, depending on the qualifying event, the value of the money or money's worth withdrawn from the partnership or the amount of the loan repaid. Paragraph 17A(7) limits the charge to the market value of the land or interest in land contributed at the outset, further reduced by the amount, if any, in respect of which the initial transfer to the partnership was liable to SDLT.

Paragraph 17A applies to transactions transferring an interest to a partnership with an effective date on or after 20 May 2005 subject to transitional provisions⁶⁷⁷. Whereas the charge under paragraph 14 (see 4.5.3 below) has since 19 July 2006 been restricted to property-investment partnerships, the restriction has not been mirrored in paragraph 17A. To deal with the possibility of a double charge arising (under paragraph 14 (transfer of an interest in a property-investment partnership) and paragraph 17A), FA 2006 introduced a credit mechanism into paragraph 17A. Where a qualifying event under paragraph 17A gives rise to a charge, and the same event gives rise to a charge under paragraph 14, the amount of the charge under paragraph 17A is reduced, but not below nil, by the amount of charge under paragraph 14⁶⁷⁸.

Paragraph 17(8) would not apply to prevent a double-charge to SDLT where one partner contributes land and the other partner contributes a cash equalisation payment which is then paid out to the partner contributing the land. The contribution of the land will be taxed on the market value of the proportionate share of the land attributable to the other partner under paragraph 10, and a further tax charge would then arise under section 17A by reference to the money paid out to equalise their respective contributions.

⁶⁷⁶ Paragraph 17A(3)

⁶⁷⁷ In paragraphs 16(3) and 16(6) to (8) of Schedule 10 to F(No.2)A 2005.

⁶⁷⁸ Paragraph 17A(8) inserted by paragraph 10 Schedule 24 FA 2006 with effect in relation to any qualifying event with an effective date of on or after 19 July 2006.

4.5.3. The charge on certain transfers of a partnership interest

(Paragraphs 14 to 17 Schedule 15)

Transfers of interests in property-investment partnerships(Paragraph 14 as amended⁶⁷⁹)

A transfer of an interest in a partnership is a land transaction chargeable to SDLT where:

- it is a transfer of an interest in a 'property-investment partnership'; and
- the 'relevant partnership property' includes a chargeable interest.

A 'property-investment partnership' ('PIP') is defined in paragraph 14(8) as a partnership whose sole or main activity is investing in or dealing in chargeable interests (whether or not that involves carrying out construction operations on land⁶⁸⁰). This means that from 19 July 2006 a partnership need not be concerned about SDLT when partnership interests change unless its business is dealing or investing in land (or it is caught by the anti-avoidance provisions in paragraph 17 or paragraph 17A Schedule 15).

There is no definition of an 'interest in a partnership' - SDLTM refers to it as 'that bundle of rights and obligations assumed by partners in a partnership'⁶⁸¹.

There is no exhaustive definition of what constitutes a 'transfer' for the purposes of paragraph 14. However, it is specifically provided that there is a transfer of an interest in a partnership (to the acquiring partner from the other partners) for the purposes of Part 3 of Schedule 15 (i.e. other than for ordinary partnership transactions) whenever a person acquires or increases a partnership share.⁶⁸² Accordingly, the charge may arise where partners join or leave a PIP, or transfer interests in the assets of a PIP between themselves.

⁶⁷⁹ By FA 2006 with effect in relation to any transfer that had an effective date on or after 19 July 2006, by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237) with effect from 6 December 2006 and by FA 2007 in relation to paragraph 14 as it stood before amendment by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237). Section 72(17) FA 2007 provides that the transitional provisions of subparagraphs (8) to (10) of paragraph 2 of the Schedule to the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 continue to have effect.

⁶⁸⁰ 'Construction operations' has the same meaning as in Chapter 3 of Part 3 FA 2004

⁶⁸¹ See SDLTM34500 (draft)

⁶⁸² Paragraph 36 Schedule 15 as substituted by FA 2007 with effect from 19 July 2007 subject to transitional provisions in section 72(14) FA 2007. Before the substitution of the new paragraph 36 a mere change in the income profit-sharing ratio would not have been treated as a transfer of an interest in the partnership because either an actual transfer of an interest to another person or a

THE SDLT REGIME IN DETAIL

It is understood that HMRC will interpret the 'wholly or mainly' test in the definition of a PIP in the same way as they interpret the test in section 105(3) IHTA 1984 (the test of business property relief for inheritance tax purposes)⁶⁸³.

Paragraph 14(6) provides that 'relevant partnership property' means every chargeable interest that was held as partnership property⁶⁸⁴ immediately after the transfer, other than:

- (a) an interest that was transferred to the partnership in connection with the transfer; and
- (b) certain leases to which paragraph 15 Schedule 15 applies (see 'market rent leases' below).

The 'purchaser' for SDLT purposes is the person who acquires an increased partnership share or who becomes a partner as a result of the transfer⁶⁸⁵. There is no longer any requirement that consideration be given for the transfer to be chargeable to SDLT⁶⁸⁶.

The chargeable consideration is deemed to be a proportion of the market value of the relevant partnership property. That proportion is:

- (a) if the purchaser was not a partner before the transfer, his partnership share immediately after it; and
- (b) if he was a partner before the transfer, the difference between his partnership share before and after the transfer⁶⁸⁷.

It is income entitlement and not capital which is used to measure partnership share.⁶⁸⁸

deemed transfer (where a person became a partner and another partner withdrew or reduced his interest under the same arrangement) was required.

⁶⁸³ The test in section 105(3) IHTA 1984 was considered in *Farmer and another (executors of Farmer, deceased) v. Inland Revenue Commissioners* [1999] STC (SCD) 321 where the Special Commissioner held that section 105(3) was concerned with what the business consisted of, and it was necessary to look at the business and its activities in the round and to consider all the relevant factors

⁶⁸⁴ Partnership property is an interest or right held by or on behalf of the partnership or the members of the partnership for the purposes of the partnership business (paragraph 34(1) Schedule 15)

⁶⁸⁵ Paragraph 14(3) Schedule 15

⁶⁸⁶ Paragraphs 14(1)(b) and 14(4) Schedule 15 were removed by FA 2007 with effect from 19 July 2007. From 6 December 2006 to 18 July 2007 transfers of an interest in a PIP were chargeable if consideration was given or, if no consideration was given, where the transferee was a person connected with the transferor.

⁶⁸⁷ Paragraphs 14(6) and 14(7) Schedule 15

⁶⁸⁸ Paragraph 34(2) Schedule 15

An interest the transfer of which would be within paragraph 14 of Schedule 15 is treated as a chargeable interest for group relief purposes to the extent that the relevant partnership property consists of a chargeable interest⁶⁸⁹. This is to enable the group relief clawback provisions to apply to it.

Following the introduction of section 75A⁶⁹⁰ (Anti-avoidance – see Section 5 below) an interest in a partnership has been treated as a chargeable interest for the purposes of that section. Taxpayers will need to be careful that a charge under section 75A does not arise on the transfer of an interest in a partnership even where paragraph 14 may not apply.

Example: Transfer of interest in a PIP

A and B are in partnership. The partnership property includes chargeable interests valued at £2,000,000 and the partnership is a PIP. C joins the partnership by buying a 10% interest from B for £250,000.

The transaction between B and C is a land transaction in which B is the purchaser and the chargeable consideration for SDLT purposes is 10% of £2,000,000 = £200,000

Note: FA 2007 amendments – transitional provisions

Section 72(14) FA 2007 provides that certain amendments to Schedule 15 made by section 72(6) and 72(10)) of that Act do not affect anything done in respect of a PIP established before 19 July 2007 (the date of Royal Assent to FA 2007) if:

- (1) the partnership does not acquire a chargeable interest on or after that day, and
- (2) SDLT was paid in respect of each chargeable interest acquired before that day, by reference to chargeable consideration of not less than the market value.

The relevant amendments are:

- (1) the omission of sub-paragraphs (1)(b) and (4) of paragraph 14 (removing the requirement for consideration),
- (2) the insertion of a new sub-paragraph 9 in paragraph 14 (treating a partnership interest as itself a chargeable interest for group relief purposes as described above); and

⁶⁸⁹ Paragraph 14(9) Schedule 15 inserted by FA 2007 with effect for transfers occurring on or after 19 July 2007 subject to transitional provisions in section 72(14).

⁶⁹⁰ From 2 pm on 6 December 2006 by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 SI 2006/3237. Sections 75A to 75C were substituted for section 75A by FA 2007 with effect from 6 December 2006 subject to transitional provisions.

THE SDLT REGIME IN DETAIL

(3) the substitution of a new paragraph 36 (Interpretation: transfer of interest in a partnership).

Market rent leases

(Paragraph 15 Schedule 15)

'Market rent leases' are excluded from the definition of 'relevant partnership property' and are therefore outside the ambit of the charge in paragraph 14. There are four conditions for 'market rent leases' and, where all the conditions are fulfilled a lease held as partnership property⁶⁹¹ immediately after a transfer of an interest in the partnership is not relevant partnership property for the purposes of paragraph 14(5). The conditions are that:

- (1) no chargeable consideration other than rent has been given in respect of the grant of the lease and no arrangements are in place at the time of the transfer for any such consideration to be given in respect of that grant;
- (2) the rent payable under the lease was a market rent at the time of the grant;
- (3) the term of the lease is five years or less or, if more than five years, there is a rent review to market rent at the review date at least once every five years. The market rent for this purpose is the rent that the lease might reasonably be expected to fetch at that time in the open market. It is important to note that a provision for 'upwards-only' reviews would not be a rent review to market rent for these purposes;
- (4) there has been no change to the lease since it was granted the result of which is that, immediately after the change takes effect, the rent payable under the lease is less than a market rent.

The exclusion of market rent leases from being relevant partnership property is intended to exclude from the paragraph 14 charge leases which have no inherent capital value. However, the fact that leases with upward-only rent reviews fall outside the definition of 'market rent leases' may seriously reduce the number of leases that come with this exclusion.

Exchanges involving partnership interests

(Paragraph 16 Schedule 15)

A special rule applies where there is an acquisition of an interest in a land-owning partnership in consideration of transferring land to an existing partner. The partnership interest acquired is regarded as a major interest in land where

⁶⁹¹Partnership property is an interest or right held by or on behalf of the partnership or the members of the partnership for the purposes of the partnership business (paragraph 34(1) Schedule 15).

the 'relevant partnership property' (as defined in paragraph 14(5)⁶⁹²) includes a 'major interest'⁶⁹³ in land so that the provisions on exchanges in paragraph 5 Schedule 4 will apply. This has the result that the exchange will be treated as two separate land transactions and the amount of the consideration for each transaction is taken to be the market value of the subject matter acquired. There will, in effect, be a double market value charge.

The relief allowed in calculating the chargeable consideration of the existing share of an interest in land which is the subject of a partition in paragraph 6 Schedule 4 is disapplied.

Anti-avoidance: transfer of partnership interest pursuant to earlier arrangements

(Paragraph 17 Schedule 15)

Avoidance provisions are in place to deal with cases where transfers are separated or staggered in order to reduce SDLT. A partnership share that is acquired in exchange for the transfer of land into a partnership may have been artificially increased and that would lower the proportion of the other partners' partnership interests and reduce the SDLT charge. Where paragraph 17 applies there is a deemed chargeable transaction (to counteract the SDLT advantage) when there is a later transfer of a partnership interest.

Paragraph 17 provides that where there is a transfer of a chargeable interest to a partnership within the meaning of paragraph 10(1) ('the land transfer') followed by a transfer of a partnership interest by the relevant partner ('the partnership transfer') pursuant to arrangements that were in place at the time of the land transfer, and the transfer of the partnership interest would not otherwise be chargeable, the partnership transfer is deemed to be a chargeable land transaction. The partners are taken to be the purchasers and the consideration is taken to be the proportion of the market value, as at the date of the transaction, of the interest transferred on the land transfer that corresponds to the partnership interest disposed of by the partner.

⁶⁹² Every chargeable interest that was held as partnership property immediately after the transfer, other than an interest that was transferred to the partnership in connection with the transfer; and certain leases to which paragraph 15 Schedule 15 applies.

⁶⁹³ A 'major interest' is defined in section 117(2) (in relation to England and Wales) as a fee simple absolute or a term of years absolute at law or in equity. The definitions applying to Scotland and Northern Ireland are in section 117(3) and (4) respectively.

THE SDLT REGIME IN DETAIL

'Arrangements' include any scheme, agreement or understanding, whether or not legally enforceable⁶⁹⁴.

Where paragraph 17 applies, the responsible partners in relation to the transfer of the partnership interest are those who were partners immediately before the transfer and who remain partners after the transfer and any person becoming a partner as a result of or in connection with the transfer.⁶⁹⁵

Transfer of a partnership interest: notification
(Paragraph 30 Schedule 15)

The acquisition of a partnership interest in respect of which a charge arises under paragraph 14 or paragraph 17 is a notifiable transaction only if SDLT is chargeable in relation to it at a rate of 1% or more. The thresholds apply for individual partners unless they are 'connected' (otherwise than by reason of partnership).⁶⁹⁶

4.5.4. Transfer of a chargeable interest from a partnership

(Paragraphs 18 to 24 Schedule 15⁶⁹⁷)

Where a chargeable interest is transferred:

- from a partnership to a person who is or has been one of the partners for his personal benefit (i.e. not as partnership property); or
- from a partnership to a person 'connected with'⁶⁹⁸ a person who is or has been one of the partners

there is a chargeable transaction for SDLT purposes. The intention of the legislation is to charge SDLT on the proportion of the market value of the land to which the recipient partner was not previously beneficially entitled by virtue of the partnership's interest in the land.

There is a transfer of a chargeable interest from a partnership where a chargeable interest that was partnership property ceases to be partnership property or where a chargeable interest is granted or created out of partnership

⁶⁹⁴ Paragraph 40 Schedule 15

⁶⁹⁵ Paragraph 17(7) Schedule 15

⁶⁹⁶ The provisions of section 839 ICTA 1988 (connected persons) apply with the omission of subsection (4) (partners connected with each other) (paragraph 39 Schedule 15).

⁶⁹⁷ Paragraph 20 was amended by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237) with effect from 6 December 2006 and by FA 2007 in relation to paragraph 20 as it stood before amendment by the Stamp Duty Land Tax (Variation of the Finance Act 2003) Regulations 2006 (SI 2006/3237).

⁶⁹⁸ The provisions of section 839 ICTA 1988 (connected persons) apply with the omission of subsection (4) (partners connected with each other) (paragraph 39 Schedule 15).

property and that interest is not partnership property.⁶⁹⁹ 'Partnership property' is an interest or right held by or on behalf of the partnership or the members of the partnership for the purposes of the partnership business⁷⁰⁰.

It is expressly provided in paragraph 18(7) that property which was partnership property before dissolution or other cessation of a partnership is treated as remaining as partnership property until it is distributed.

The chargeable consideration is found in the same way as for a transfer of a chargeable interest to a partnership under paragraph 10 ($MV \times (100 - SLP)\%$), with the qualification that for a group transaction paragraph 27A does not apply. Paragraph 19 applies in the same way as paragraph 11 when the chargeable consideration includes rent.

Transfer from a partnership: determining the SLP
(Paragraphs 20 to 22 Schedule 15)

The SLP is determined under paragraph 20 in the same way as it is in relation to the transfer of a chargeable interest to a partnership,⁷⁰¹ with the exception of *Step Four*, where the 'partnership share attributable to the partner' needs to be found by applying paragraphs 21 and 22.

Where the chargeable interest was transferred to the partnership before 20 October 2003⁷⁰², or, where it was transferred on or after that date but the transfer was stamped, either ad valorem or with fixed duty, or SDLT was paid, a charge to tax under paragraph 20 will arise only on the proportion of the market value of the property interest transferred on which tax has not previously been paid. This proportion is calculated by a statutory formula (set out in paragraphs 21 and 22) which takes account of increases or decreases in partnership shares since the property was transferred to partnership. These rules are set out in detail below.

The 'partnership share attributable to the partner' is zero where the effective date of the transfer of the 'relevant chargeable interest' to the partnership was on or after 20 October 2003 and neither ad valorem stamp duty nor SDLT was paid on the transfer. The 'relevant chargeable interest' is the interest that ceases to be partnership property as a result of the transfer or, where the transaction is

⁶⁹⁹ Paragraph 37 Schedule 15

⁷⁰⁰ Paragraph 34(1) Schedule 15

⁷⁰¹ Under paragraph 12 Schedule 15 – see 4.5.2 above

⁷⁰² The date of publication by HMRC of the draft legislation amending Schedule 15 which was enacted in FA 2004

THE SDLT REGIME IN DETAIL

the grant or creation of a chargeable interest, is the chargeable interest out of which that interest is granted or created.

Where:

- (1) the effective date of the transfer of the 'relevant chargeable interest' to the partnership was before 20 October 2003; or
- (2) the effective date of the transfer of the relevant chargeable interest to the partnership was on or after 20 October 2003 and either ad valorem stamp duty or SDLT was paid on the transfer

the partnership share attributable to the partner is determined as follows:

Step One: Find the partner's actual partnership share on the 'relevant date'. The 'relevant date' is:

- in a case falling within (1) above, the later of 19 October 2003 and the date on which he became a partner
- in a case falling within (2) above, the later of the effective date of the transfer of the relevant chargeable interest to the partnership and the date on which he became a partner.

Step Two: To that partnership share add any increases in the partner's partnership share which occurred in the period beginning on the day after the relevant date and ending immediately before the transfer of the chargeable interest from the partnership and which 'count' for this purpose. The result is the 'increased partnership share'. An increase 'counts' for this purpose only where (in the case where the transfer which resulted in the increase took place on or before 22 July 2004) the instrument of transfer has been duly stamped with ad valorem stamp duty or (in the case where the transfer which resulted in the increase took place after 22 July 2004) SDLT which was payable has been paid on the transfer.

Step Three: Deduct from the increased partnership share any decreases in the partner's partnership share which occurred in the period beginning on the day after the relevant date and ending immediately before the transfer of the chargeable interest from the partnership.

The result is the partnership share attributable to the partner. If the effect of applying *Step Three* would be to reduce the partnership share attributable to a partner below zero, the partnership share attributable to that partner is zero. The partnership share will also be zero if:

- in a case falling within (1) above, the partner ceased to belong to the partnership before 19 October 2003; or
- in a case falling within (2) above, the partner left the partnership before the effective date of the transfer of the relevant chargeable interest to the partnership.

Example: Transfer of land out of a partnership

A initially has a 75% interest in a land-owning partnership. When the value of the property held by the partnership is £2 million A purchases an additional 10% interest in the partnership from the other partners who are unconnected with him and pays SDLT on a chargeable consideration of £200,000. Some time later, when the property is worth £3 million it is transferred to A on his retirement from the partnership.

The chargeable consideration on the transfer to A will be calculated as follows:

A's interest in the partnership when the property was contributed = 75%

Subsequent interest acquired = 10%

SLP = 75% + 10% = 85%

Chargeable consideration = MV × (100-SLP)%

= (15% × £3,000,000)

= £450,000

Transfer from a partnership to a partnership

(Paragraph 23 Schedule 15⁷⁰³)

This provision deals with the case where there could be two possible SDLT charges, one on land going in, and the other on land coming out, of a partnership.

Where there is a transfer of a chargeable interest from a partnership to a partnership and the transfer is within both the provision for a transfer to a partnership (in paragraph 10) and from a partnership (in paragraph 18), and none of the chargeable consideration is rent, the chargeable consideration is taken to be whichever is the greater under the two provisions. If the whole or part of the chargeable consideration is rent, the chargeable consideration is taken to be whichever is the greater under paragraphs 11 and 19.

A change in the identity of the partners will not amount to a transfer to another partnership as long as any person who was a member before the change remains a member after the change⁷⁰⁴.

Transfer out of a wholly corporate partnership

(Paragraph 24 Schedule 15⁷⁰⁵)

Where immediately before the transfer out of a partnership the partners are all bodies corporate and the SLP is 75 or more, there is no reduction under

⁷⁰³ As modified by FA 2006 with effect from 19 July 2006

⁷⁰⁴ Paragraph 3 Schedule 15

⁷⁰⁵ As amended by FA 2006 from 19 July 2006

THE SDLT REGIME IN DETAIL

paragraph 18 of Schedule 15. The charge in such a case bites on market value and the full NPV of any rent. This is an anti-avoidance measure and the transferee will have to be in a position to claim group relief to escape the charge, with the possibility of a clawback of that relief should it leave the group within three years.

There is no equivalent provision on transfers of land out of a partnership to paragraph 27A Schedule 15 (which applies a modified form of group relief on the transfer of land into a partnership which includes corporate partners who are members of the same group of companies as the transferor⁷⁰⁶).

4.5.5. Application of exemptions and reliefs

(Paragraphs 25 to 28 Schedule 15)

The exemption from SDLT in paragraph 1 Schedule 3 (transfers for no chargeable consideration) does not apply to partnership transactions to which the special provisions in Schedule 15 apply. This allows the market value rules to operate on contributions and distributions of capital for which no consideration is given.

All the other SDLT exemptions do apply, subject to modification in the case of disadvantaged areas relief⁷⁰⁷, group relief⁷⁰⁸ and charities relief.⁷⁰⁹ The modifications are intended to ensure that these reliefs apply in the same way as for non-partnership transactions.

4.5.6. Continued application of stamp duty to transfers of partnership interests

(Paragraphs 31 to 33 Schedule 15)

Paragraph 31 Schedule 15 provides for the continued application of stamp duty to instruments transferring a partnership interest,⁷¹⁰ but paragraph 32 modifies the consideration in the case of a land-owning partnership.

Where stamp duty is charged on an instrument transferring an interest in a partnership and the relevant partnership property includes an interest in land, the consideration for the transaction for stamp duty purposes is reduced by the

⁷⁰⁶ See *Transfer of chargeable interest to a partnership that consists of or includes companies* in 4.5.2 above.

⁷⁰⁷ Paragraph 26 Schedule 15

⁷⁰⁸ Paragraph 27 Schedule 15

⁷⁰⁹ Paragraph 28 Schedule 15

⁷¹⁰ Paragraph 31 has the effect of preserving the stamp duty which would have been chargeable under FA 1999 Schedule 13, where a transfer is not on sale. For example, a transfer otherwise than on sale of a partnership interest would still be chargeable with a fixed duty of £5.