

2012 No. 2395

STAMP DUTY LAND TAX

The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2012

Made - - - - - *17th September 2012*
Laid before the House of Commons *18th September 2012*
Coming into force - - - *1st November 2012*

The Treasury, in exercise of the powers conferred 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) (Amendment) Regulations 2012 and come into force on 1st November 2012.

(2) In these Regulations—

“the principal Regulations” means the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005(b).

Amendment of the Principal Regulations

2. The principal Regulations are amended as follows.

3. For regulation 1(2) of the principal Regulations substitute—

“(2) In these Regulations—

“chargeable interests” has the meaning given by section 48 of the Finance Act 2003(c);

“partnership” has the meaning given by paragraph 1 of Schedule 15 to the Finance Act 2003;

“settlement” has the meaning given by paragraph 1 of Schedule 16 to the Finance Act 2003.”.

4. For regulation 1(3) of the principal Regulations substitute —

“(3) For the purposes of these Regulations, section 1122 of the Corporation Tax Act 2010(d) applies to determine whether persons are connected.”.

(a) 2004 c. 12.

(b) S.I.2005/1868 amended by regulation 2(2) of the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2010, S.I. 2010/407; in regulation 2(2) the words “property (whether residential or non-residential)” were substituted for the words “non-residential property”.

(c) 2003 c. 14.

(d) 2010 c. 4.

5.—(1) For regulation 2 (prescribed description of arrangements in relation to stamp duty land tax)(a) of the principal Regulations substitute—

“2.—(1) For the purposes of Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) the arrangements specified in paragraph (2) are prescribed in relation to stamp duty land tax.

(2) The arrangements are those which involve the acquisition of chargeable interests.

(3) Subject to paragraph (4) below, arrangements are excepted from disclosure under this regulation if—

- (a) they are excluded by virtue of the provisions in the Schedule to these Regulations; or
- (b) they are of the same, or substantially the same, description as arrangements which were first made available for implementation before 1st April 2010.

(4) Arrangements are not excepted from disclosure under paragraph (3)(b) above where—

- (a) a chargeable interest is acquired under a contract, the substantial performance or completion of which falls to be disregarded under section 45(3) of the Finance Act 2003, and
- (b) the secondary contract referred to in section 45(3) of the Finance Act 2003 arises from a transaction with one or more of these features—
 - (i) a distribution *in specie*;
 - (ii) an acquisition by a partnership;
 - (iii) an acquisition by a settlement;
 - (iv) an element of gift or transfer at an undervalue;
 - (v) the grant of an option;
 - (vi) an assignment or novation.

(5) In paragraph (4)(b) above a distribution *in specie* means a distribution of an asset in physical form without selling it and distributing the proceeds of sale.”

6. In the Schedule to the principal Regulations (excluded arrangements), for paragraph (a) in Step B: Claims to relief, substitute—

- “(a) a single claim to relief under any of the following provisions of the Finance Act 2003—
- (i) section 57A(b) (sale and leaseback arrangements);
 - (ii) section 58B(c) (relief for new zero-carbon homes);
 - (iii) section 58C(c) (relief for new zero-carbon homes: supplemental);
 - (iv) section 60 (compulsory purchase facilitating development);
 - (v) section 61(d) (compliance with planning obligation);
 - (vi) section 63 (demutualisation of insurance company);
 - (vii) section 64 (demutualisation of building society);
 - (viii) section 65 (incorporation of limited liability partnership);

(a) Regulations 2(3)-(3B) were substituted for the previous regulation 2(3) by regulation 2 of the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations, SI 2010/407.

(b) Section 57A was inserted by paragraph 16 of Part 2 of Schedule 39 to the Finance Act 2004.

(c) Section 58B and 58C were inserted by section 19(1) of the Finance Act 2007 (c. 11).

(d) Section 61(3) was amended by section 2 of and paragraphs 232 and 233(a)-(e) of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43) and by section 160(1) and paragraphs 62 and 63 of Schedule 10 to the Government of Wales Act 2006 (c. 32).

- (ix) section 66(a) (transfers involving public bodies);
- (x) section 67 (transfer in consequence of reorganisation of parliamentary constituencies);
- (xi) section 69 (acquisition by bodies for national purposes);
- (xii) section 71(b) (certain acquisitions by registered social landlords);
- (xiii) section 74(c) (collective enfranchisement by leaseholders);
- (xiv) section 75 (crofting community right to buy);
- (xv) Schedule 6(d) (disadvantaged areas relief);
- (xvi) Schedule 6A(e) (relief for certain acquisitions of residential property);
- (xvii) Schedule 6B(f) (transfers involving multiple dwellings);
- (xviii) Schedule 7(g) (group relief and reconstruction acquisition relief);
- (xix) Schedule 8(h) (charities relief);
- (xx) Schedule 9(i) (right to buy, shared ownership leases etc); or
- (aa) a single claim to relief under Schedule 61 to Finance Act 2009(j) (alternative finance investment bonds); or”.

Michael Fabricant
James Duddridge

17th September 2012

Two of the Lords Commissioners of Her Majesty’s Treasury

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- (a) Section 66(4) was amended by section 160(1) of and paragraphs 62 and 64 of Schedule 10 to the Government of Wales Act 2006 and section 2 of and paragraphs 232 and 234 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006. Section 66(6) was amended by article 3(5)(a) of the Companies Act (Consequential Amendments) (Taxes and National Insurance) Order, S.I. 2009/1890.
 - (b) Section 71(A1) was inserted by section 81(1)–(3) of the Finance Act 2009 (c. 10). Section 71(1A) was inserted by section 277 of and paragraphs 29, 30(1) and (2) of Schedule 9 to the Housing and Regeneration Act 2008 (c. 17). Section 71(1), (2) and (3)(a) was amended by section 277 and paragraphs 29, 30(1) and (2) of Schedule 9 to the Housing and Regeneration Act 2008. Section 71(4) was amended by sections 81(1)–(4) of the Finance Act 2009. Section 71(4)(ca) was inserted by section 56 of and paragraph 79 of Schedule 8 to the Housing Regeneration Act 2008. Section 71(4)(e) was amended by article 3 of and paragraph 8 of the Schedule to the Housing (Amendment) (Northern Ireland) Order S.I. 2006/3337.
 - (c) Section 74(1), (2) and (4) were amended by section 80 of the Finance Act 2009.
 - (d) Schedule 6 was repealed by paragraph 8(1) of Schedule 39 to the Finance Act 2012 (c. 14) with effect in relation to any land transaction with an effective date on or after 6 April 2013.
 - (e) Schedule 6A was inserted by paragraph 17(2) of Part 2 of Schedule 39 to the Finance Act 2004.
 - (f) Schedule 6B was inserted by section 83 of and paragraphs 1 and 3 of Schedule 22 to the Finance Act 2011 (c. 11).
 - (g) Paragraphs 1(4), 1(6), 2(5), 4ZA(7)(a), 5(4), (9)(5)(b), 10(6), 11(6)(b) and 12(5)(a) and (b) were amended by, and paragraphs 4A(1) and (3) and 3A substituted by, section 1177 of and paragraphs 400, 416(1), (2), (3), (4), (6), (7), (8), (9) and (10) of Schedule 1 to the Corporation Tax Act 2010 (c. 4). Paragraph 3(5) was substituted by sections 96(1) and (2) of the Finance Act 2008 (c. 9). Paragraphs 4(2) and (3) repealed, and the words in paragraph 4(5) substituted by, section 96(1) and (3) of the Finance Act 2008. Paragraphs 4(6A) and (7) were inserted by section 167(4) of the Finance Act 2006 (c. 25). Paragraph 4ZA was inserted by section 96(1) and (4) of Finance Act 2008. Paragraph 7(5A) was inserted by section 74(3) and (5) of the Finance Act 2007.
 - (h) Paragraphs 1(1), 2(1) and 3(1) were amended by section 302(1), (3), (4) and (7) of the Finance Act 2004 (c. 12). Paragraphs 3(3)(b) and (5) were amended by section 95(7) of the Finance Act 2008.
 - (i) Paragraph 1(3) was amended by article 7(1) of and paragraph 14 of Schedule 2 to the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order, S.I. 2005/3226 and section 277 of and paragraphs 29, 32(1), (3) and (4) of Schedule 9 to the Housing Regeneration Act 2008. Paragraph 1(5) was amended, and paragraph 1(6) inserted, by section 277 and paragraphs 29, 32(1), (3) and (4) of Schedule 9 to the Housing and Regeneration Act 2008.
 - (j) 2009 c. 10.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005 (S.I. 2005/1868) (“the principal regulations”), which prescribe descriptions of schemes that have to be notified to HMRC under Part 7 of the Finance Act 2004 (c.12).

Regulation 3 substitutes a new regulation 1(2) of the principal regulations to remove the monetary limits for notifying schemes.

Regulation 4 substitutes a new regulation 1(3) of the principal regulations to substitute section 1122 of the Corporation Tax Act 2010 (2004 c. 4) for section 839 of the Income and Corporation Taxes Act 1988 (1988 c.1).

Regulations 5 and 6 substitute a new regulation 2 of and amend the Schedule to the principal regulations, to make exceptions to the rules specifying that certain schemes need not be reported and to amend the table of claims to relief which are excluded from being prescribed arrangements.

A Tax Information and Impact Note covering this Instrument was published in December 2011 alongside the draft Finance Bill. This will be updated as a result of changes to the impacts as a result of this instrument and will be available on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

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