

NOTICES OF AMENDMENTS

given on

Tuesday 4 June 2013

Public Bill Committee

FINANCE BILL

(Except Clauses 1, 3, 16, 183, 184 and 200 to 212; Schedules 3 and 41; any new Clauses, and any new Schedules, first appearing on the Order Paper not later than Tuesday 16 April 2013 and relating to tax measures concerning housing; and any new Clauses, and any new Schedules, relating to value added tax or the bank levy or air passenger duty or the subject matter of Clauses 1 and 16 and Schedule 3 or the subject matter of Clause 3 or the subject matter of Clauses 203 to 212 and Schedule 41)

Mr David Gauke

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Clause 192, page 113, line 26, after ‘rights)’ insert—

- ‘(a) has effect subject to the amendment in subsection (1A) in relation to agreements for the grant or assignment of an option that are entered into during the period beginning with 21 March 2012 and ending immediately before the day on which this Act is passed, and’.

Mr David Gauke

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Clause 192, page 113, line 28, leave out from ‘into’ to end of line 29 and insert ‘during that period’.

Mr David Gauke

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Clause 192, page 113, line 29, at end insert—

- ‘(1A) At the end of subsection (1A) insert “or an agreement for the future grant or assignment of an option”.’.

Mr David Gauke

63

Clause 192, page 114, line 30, at end insert—

- ‘(6A) Subsections (8) to (10) apply where—
- (a) as a result of subsection (1A) of this section, section 45 of FA 2003 does not apply in relation to a contract of the kind mentioned in subsection (1)(a) of that section (“the original contract”),

Finance Bill, *continued*

- (b) the original contract was substantially performed or completed (or, in a case that would have fallen within subsection (5) of that section, substantially performed or completed so far as relating to the relevant part of the subject-matter of the original contract) at the same time as, and in connection with, the substantial performance or completion of an agreement for the grant or assignment of an option, and
- (c) that time fell before the day on which this Act is passed.’.

Mr David Gauke

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Clause **192**, page **114**, line **31**, leave out from beginning to ‘apply’ and insert ‘Subsections (8) to (10) also’.

Written Ministerial Statement

Anti-avoidance

The Exchequer Secretary to the Treasury (David Gauke): The Government is today tabling an amendment to Finance Bill 2013 to put beyond doubt that a particular Stamp Duty Land Tax (SDLT) avoidance scheme is ineffective. The scheme uses the SDLT transfer of rights rules to avoid SDLT on the purchase of UK land. The legislation will have effect from 21 March 2012.

Because of repeated avoidance in this area, at Budget 2012 the Chancellor of the Exchequer made it clear that he would not hesitate to use retrospective legislation to close down future SDLT avoidance schemes.

Acting on this warning it was announced at Budget 2013 that legislation will be introduced in the Finance Bill to close down two schemes, which use the transfer of rights rules, with effect from the date of the Chancellor's warning, 21 March 2012.

Since then a further transfer of rights scheme has been identified. The Government does not accept that the scheme has the effect intended but to remove any doubt, prompt action is being taken to protect the Exchequer.

Given the Chancellor's clear warning last year and the announcement at Budget 2013 of retrospective legislation to close down similar transfer of rights schemes, it should have been obvious to both promoters and users of this scheme that it could be subject to retrospective action.

An updated Tax Information and Impact Note and Guidance Note are available on the HMRC website.

HM Treasury
4 June 2013

FINANCE BILL 2013
CLAUSE 192

EXPLANATORY NOTE

CLAUSE 192: PRECOMPLETION TRANSFERS: EXISTING CASES

SUMMARY

1. Clause 192 amends section 45 of the Finance Act 2003 (transfer of rights) to put beyond doubt that certain types of Stamp Duty Land Tax (SDLT) schemes involving an onward sale (a ‘subsale’ or ‘transfer of rights), which is not completed for a number of years, are ineffective. The amendments will have retrospective effect to 21 March 2012. Amendments 60 to 64 make changes to clause 192 to make it explicit that a further transfer of rights scheme, which involves an agreement to grant or assign an option, is ineffective.

DETAILS OF THE AMENDMENT

2. Amendments 60 and 61 provide that section 45 has effect subject to amendment 3 in relation to agreements for the grant or assignment of an option entered into between 21 March 2012 and the day on which the Finance Bill receives Royal Assent.
3. Amendment 62 amends section 45(1A) to exclude agreements for the grant or assignment of option from being a transfer of rights within section 45(1)(b).
4. Amendment 63 provides that, in cases to which amendment 3 applies, the purchaser under the original contract must submit a land transaction return or, if one has been submitted already, an amendment to it, no later than 30 September 2013.

BACKGROUND

5. Clause 192 was introduced to put it beyond doubt that certain Stamp Duty Land Tax (SDLT) schemes, which abuse the transfer of rights rules, are ineffective. The changes will have effect from 21 March 2012.
6. The changes were made in response to the continued use of these schemes despite previous Government action to tackle SDLT avoidance and a warning by the Chancellor of the Exchequer at Budget 2012 that he would not hesitate to use retrospective legislation to close down future SDLT avoidance schemes.
7. The amendment will include a further scheme, which also abuses the transfer of rights rules, within the legislation.

Stamp duty land tax avoidance

Who is likely to be affected?

Users and promoters of schemes for the avoidance of stamp duty land tax (SDLT).

General description of the measure

The measure amends section 45 of the Finance Act 2003 (transfers of rights) to put beyond doubt that two certain types of SDLT avoidance scheme is ineffective. The first scheme involves an onward ('sub') sale (or 'transfer or rights') which is not to be completed for a number of years. The second scheme, a variation of the scheme closed down at Budget 2012, involves an agreement to grant or assign an option. The intended result of the arrangements is that the immediate purchaser is left in possession of the property but bears no SDLT liability, while the transfer of rights, although in principle subject to SDLT, falls below the SDLT threshold.

Policy objective

This measure supports the Government's anti-avoidance strategy and its fairness agenda by helping to ensure that everyone buying property pays their fair share of SDLT.

Background to the measure

Budget 2012 made very clear that the Chancellor of the Exchequer would not hesitate to use retrospective legislation to close down future stamp duty land tax (SDLT) avoidance schemes. This measure is a response to the continued use of such schemes.

The measure has not been subject to formal consultation.

This Tax Information and Impact Note (TIIN) updates and replaces the TIIN published on 20 March 2013.

Detailed proposal

Operative date

This measure has effect where the transfer of rights takes place on or after 21 March 2012 and before Royal Assent of the Finance Bill 2013.

Current law

Section 45 of the Finance Act (FA) 2003 applies where a person contracts to purchase an interest in land but, before completion, transfers their rights under the contract to a third party. Where the original contract completes or is substantially performed at the same time as the completion or substantial performance of the transfer of rights contract, the first contract is disregarded. As a result, the purchaser under the original contract pays no SDLT and does not need to notify HMRC. Broadly speaking, the section is designed to provide for a single charge to SDLT where the original purchaser acts as a mere intermediary.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to amend section 45 to provide that:

- The original contract will not be disregarded where:
 - the transfer of rights contract is substantially performed but not completed at the same time as the completion or substantial performance of the original contract;
 - the purchaser under the original contract is in possession of the property after the date of completion or substantial performance; and,
 - the main purpose or one of the main purposes of the transfer of rights contract is the obtaining of a tax advantage by the purchaser under the original contract.
- An agreement to grant or assign an option is not a transfer of rights.

The purchaser under the original contract is required to notify HMRC of any SDLT due by 30 September 2013, by either submitting a land transaction return (where no return has previously been submitted) or making an amendment to their return. Further details on notifying HMRC can be found on the Budget 2013 page of the HMRC website.

These changes will be superseded by the revisions to the transfer of rights rules in section 45 of FA 2003, which will come into effect at Royal Assent. Consultation on the revision of section 45 was announced at Budget 2012 and, following consultation, draft legislation was published in December 2012.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
	+45	+35	+30	+25	+25
	<p>These figures are set out in Table 2.1 of the Budget Report and have been certified by the Office of Budget Responsibility. More details can be found in the policy costings document published alongside the Budget.</p> <p>This measure supports the Exchequer in its commitment to protect revenue.</p> <p>The figures include the impact of the associated changes to the transfer of rights rules.</p>				
Economic impact	The measure is not expected to have any significant economic impacts.				
Impact on individuals and households	These changes will only affect individuals and households who enter into certain avoidance schemes. Additional compliance costs are expected to be de minimis.				
Equalities impacts	No information is held about the protected equality groups of the users of the affected schemes, although there is no reason to expect any impact.				
Impact on business including civil society organisations	The measure addresses avoidance using the transfer of rights rules. These schemes constitute an unfair advantage and in removing that there will be no impact on the normal and commercial transactions of businesses and Civil Society organisations.				

Operational impact (£m) (HMRC or other)	The additional costs for HMRC in implementing this change are anticipated to be negligible.
Other impacts	<p><u>Small firms impact test:</u> some of the scheme promoters and users are likely to be small firms (less than 20 employees) and they may be affected by these changes, but only if they promote or use certain avoidance schemes.</p> <p>Other impacts have been considered and none have been identified.</p>

Monitoring and evaluation

The measure will be monitored through the SDLT compliance programme and disclosures received through the DOTAS (disclosure of tax avoidance schemes) regime.

Further advice

If you have any questions about this change please send them in an email to: Budget2013.stamptaxes@hmrc.gsi.gov.uk.

Declaration

David Gauke MP, Exchequer Secretary to the Treasury, has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.



**HM Revenue
& Customs**

**Stamp duty land tax avoidance: retrospective changes to
section 45 of the Finance Act 2003**

Guidance Note
Updated 3 June 2013

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Chapter 1: Introduction

Budget 2012 made clear that the Chancellor of the Exchequer would not hesitate to use retrospective legislation to close down future stamp duty land tax (SDLT) avoidance schemes.

Despite the Chancellor's warning, since Budget 2012, two specific SDLT avoidance schemes, which abuse the transfer of rights (or 'subsale') rules, and are used particularly, but not exclusively, for residential properties, have been growing increasingly popular. As a result at Budget 2013 the Chancellor announced that legislation would be introduced to close down these schemes and that the new legislation would apply retrospectively to 21 March 2012.

The Government has today announced that a further scheme, which also abuses the transfer of rights rules, will be included within the retrospective legislation.

This note provides information on the legislative changes that are being made and what users of these schemes must now do to notify HM Revenue & Customs (HMRC) and pay the SDLT due.

This Guidance Note updates and replaces the Guidance Note published on 20 March 2013.

If you have questions about these changes please send an email to:
Budget2013.stamptaxes@HMRC.gsi.gov.uk.

Chapter 2 - Overview of the current rules and the changes

Overview of current rules:

1. The current transfer of rights (or 'subsale') rules are set out in section 45 of the Finance Act 2003. They apply where a person has contracted to purchase land but, before completion, enters into another contract to sell the land to a third party. The intention is that, where a purchaser is essentially acting as an intermediary and does not take possession of the land, there should not be a double charge to SDLT.
2. Broadly speaking, the rules apply where person A agrees to sell the land to person B, but, before the original transaction is completed, person B agrees to sell the same land, or part of it, to C (a 'transfer of rights').
3. The rules provide that the transfer of rights to C is not regarded as a land transaction: instead C is treated as the purchaser under a notional 'secondary contract'. On the completion of C's acquisition, C is charged tax on the total of the consideration given for the transfer of rights and any consideration given by C (or any connected party) under the original contract.
4. If the A to B transaction completes at the same time (and in connection with) the B to C transaction, then the completion of that (A to B) transaction is disregarded, there is no charge on B and B does not need to notify HMRC of the transaction.

Overview of the changes that apply from 21 March 2012

5. For the changes announced at Budget 2013, the amendments to section 45 will provide that the original contract will not be disregarded where:
 - a. the notional secondary contract is substantially performed but not completed at the same time as the substantial performance or completion of the original contract,
 - b. the purchaser under the original contract (or a person connected with them) is in possession of the land after that date, and
 - c. the main purpose, or one of the main purposes, of the transfer of rights is the obtaining of a tax advantage by the purchaser under the original contract.
6. For the change announced today, section 45(1A) will be amended to state explicitly that an agreement to grant or assign an option is excluded from being a transfer of rights within section 45(1)(b).
7. The purchaser under the original contract is required to notify HMRC of any SDLT due by 30 September 2013, by either submitting a return (where no return has previously been submitted) or, if they have made a return, by making an amendment to that return. (See Chapters 4 & 5 for further details).

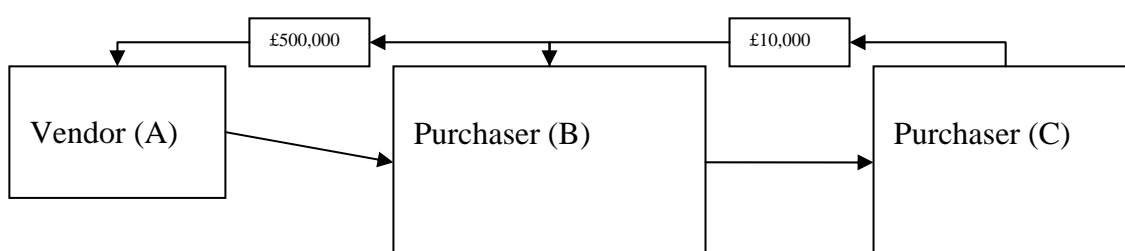
8. The amendments will apply to transfers of rights or agreements for the grant or assignment of an option entered into on or after 21 March 2012 but before the date on which the Finance Bill receives Royal Assent. They will be superseded by revisions to the transfer of rights rules in section 45 of FA 2003, which will have effect for transfer of rights entered into on or after the date on which the Finance Bill receives Royal Assent.

Chapter 3 – Description of the tax avoidance schemes

Overview of the delayed completion schemes

1. In both schemes, completion of the notional ‘secondary contract’ is delayed for up to 125 years, leaving the purchaser under the original contract in possession of the property without bearing any SDLT liability. The secondary contract is substantially performed at the same time as the substantial performance or completion of the original contract. The consideration for the secondary contract falls below the SDLT threshold.

Scheme description – example



- A contracts to sell a property to B by way of a normal conveyance for, say, £500,000.
 - Before completion of the A to B contract, B contracts with C to sell the property to C in 125 years.
 - The consideration payable by C to B is low (say £10,000) and this is paid at the same time as the substantial performance or completion of the A to B contract, thereby substantially performing the B to C contract.
 - In the first scheme, C is a trust, of which B is both the settlor and beneficiary. In the second scheme C is either a company (set up specifically to facilitate the scheme) or another person, sometimes connected to B.
2. The promoters and users of the schemes claim that B has no SDLT liability because his transaction is ‘disregarded’ under section 45 and that C pays no SDLT because the consideration he pays is beneath the SDLT threshold.
 3. HMRC do not believe that the schemes produce the tax result claimed and these changes are being made to put that beyond doubt.

Overview of the agreement to grant or assign an option scheme

4. This scheme has a similar effect to the deferred completion scheme described above, with the purchaser under the original contract being left in possession of the property

without bearing any SDLT liability and the consideration for the secondary contract falling below the SDLT threshold.

5. It is similar to the scheme that was closed down at Budget 2012. In that scheme B entered into an option agreement with C under which C could call for B to sell the property to him at a future date on exercise of the option.
6. In this latest scheme an additional step is added whereby prior to the grant of the option B enters into an agreement with C to grant him an option to purchase the property.
7. Scheme description
 - A contracts to sell a property to B by way of a normal conveyance (“the original contract”).
 - B also enters into an agreement with C to grant him an option under which C can call for B to sell him the property on the exercise of the option.
 - The original contract and the agreement to grant the option are completed at the same time. The option may be granted at the same time or at some future date.
8. B claims that he had no liability to SDLT as his acquisition is ‘disregarded’ under section 45. It is claimed that it is the agreement and not the grant of the option that is the transfer of rights and therefore the 2012 change does not apply. C pays no SDLT because the consideration paid for the agreement is below the SDLT threshold.
9. HMRC do not believe that this scheme produces the tax result claimed and these changes are being made to put that beyond doubt.

Chapter 4 – Notifying HMRC by delivery of a land transaction return

- Q1. I used a SDLT saving scheme but am not sure whether it was one of the schemes to which the changes apply. How can I find out what scheme I used?
- A2. You should contact the tax adviser who advised you on the scheme.
- Q2. I have used one of these schemes and I now need to notify HMRC of my liability to SDLT. I have not submitted a return for this transaction. What do I need to do?
- A2. You must submit a land transaction return to HMRC no later than 30 September 2013. You can do this either online or by sending a paper return (SDLT1) to HMRC.

SDLT1

You can find out more about completing a paper SDLT1 by following the link below.

[Completing the paper SDLT return](#)

Your completed return should be sent to:

Sal Rai
HM Revenue & Customs
Stamp Taxes
9th Floor, City Centre House
30 Union Street
Birmingham
B2 4AR

You can order a paper SDLT1 form from 0845 6030135.

Filing online

You can find out more about online filing by following the link below.

[Using Stamp Taxes Online to file your return](#)

- Q3. When completing my return, what date do I enter as the effective date of the transaction?
- A3. The effective date of the transaction is the date on which your purchase was completed (or substantially performed if this was earlier).

- Q4. When do I need to send the return by?
- A4. Your return must be received by HMRC no later than 30 September 2013.
- Q5. Can I send the return to HMRC before 30 September 2013?
- A5. Yes, you can send your return to HMRC at any time up to 30 September 2013.
- Q6. Will I receive a penalty for filing my return late?
- A6. If you file a paper SDLT1 return, you should send it to Birmingham Stamp Office, and we will not impose a penalty. If you file it online, a late filing penalty will be issued automatically, although it will be cancelled if you write to the Birmingham Stamp Office asking for it to be lifted.
- Q7. What if I file my return after 30 September 2013?
- A7. We will impose late filing penalties.
- Q8. When do I have to pay the tax?
- A8. The tax must be paid no later than 30 September 2013 but you can pay earlier if you wish. Paying earlier will reduce the amount of interest due (see Q&A 10 below).
- Q9. How do I pay the tax?
- A9. There are various ways of paying the tax due. Details of these are available on the HMRC website 'How to pay Stamp Duty Land Tax'.

[How to pay Stamp Duty Land Tax](#)

- Q10. Will I have to pay interest?
- A10. Yes. Interest on the unpaid tax will accrue from 30 days after the date you completed your purchase ('the effective date') until the tax is paid in full.
- Q11. What do I need to do if I complete my purchase after 20 March 2013?
- A11. These changes will apply, the section 45 disregard will not apply, and you will be liable to pay any SDLT due on the purchase. We recommend that you submit a return, under the normal rules, within 30 days of the date of completion of your purchase.

Chapter 5 – Notifying HMRC by making an amendment to a land transaction return

- Q1 I used a SDLT saving scheme but I am not sure whether it was one of the schemes to which the changes apply. How can I find out what scheme I used?
- A1. You should contact the tax adviser who advised you on the scheme.
- Q2. I have used one of these schemes and I have already submitted a return on which I claimed a relief from SDLT. What do I need to do now?
- A2. You must notify HMRC, no later than 30 September 2013, that you wish to make an amendment to your return.
- Q3. How do I do this?
- A4. Write to us as follows:

SDLT: Retrospective changes to section 45 of Finance Act 2003 Amendment to land transaction return

Property Details

- UTRN (of original return)
- Name of lead purchaser
- Name of additional purchaser
- Address and postcode of property
- Effective date of transaction (dd/mm/yyyy)

Statement

I wish to amend my self assessment return. The correct figures are:

Consideration £

Tax £

Signature of lead purchaser

Signature of second purchaser

Contact details of lead purchaser

- Telephone number
- Email address
- Address and postcode (if different from property address)

Q5. Where should I send my notification?

A5. You should send you notification by email or post to:

Email

Budget2013.section45@ hmrc.gsi.gov.uk

Please note that HMRC cannot guarantee the security of emails you send to us or we send to you over the internet. Information sent by email over the internet is not secure and is at risk of being intercepted and read by people other than those it was intended for. Any information you send to us by email is at your own risk. If you have any doubt about the authenticity of an email you receive which claims to come from HMRC please do not follow any links within the email, disclose any personal details or respond to it. Forward it to us at: phishing@hmrc.gsi.gov.uk

Post

Sal Rai
HM Revenue & Customs
Stamp Taxes
9th Floor, City Centre House
30 Union Street
Birmingham
B2 4AR

Q6. When do I need to send the notification by?

A6. Your notification must be received by HMRC no later than 30 September 2013.

Q7. Can I send the notification to HMRC before 30 September 2013?

A7. Yes, you can send your notification at any time up to 30 September 2013.

Q8. Will any penalties apply?

A8. There are no late filing penalties for amendments to returns, but HMRC will consider whether you should pay a penalty for the original incorrect return.

Q9. When does the tax have to be paid?

A9. The tax due should be paid at the same time as the notification is made.

Q10. How do I pay the tax?

A10. There are various ways of paying the tax due. Details of these are available on the HMRC website 'How to pay Stamp Duty Land Tax'.

[How to pay Stamp Duty Land Tax](#)

Q11. Will I have to pay interest?

A11. Yes. Interest on the unpaid tax will accrue from 30 days after the date you completed your purchase ('the effective date) until the tax is paid in full.