

Partnership interests in land become subject to Stamp Duty Land Tax from 22nd July 2004



The new rules obviously deal with partnerships that invest or trade in land. However, if you are a partnership that owns its own property within the partnership, or

you have clients in this position then you will also have to consider the implications of Stamp Duty Land Tax whenever there is a change in the partners, or a change in the proportion of ownership of the property. Partnerships also include Limited Liability Partnerships; limited partnerships; or similar overseas structures.

If a new partner also acquires an interest in the property then he will be subject to SDLT

on the **market value** of the proportion of the property acquired at normal SDLT asset rates. Likewise, on the retirement of a partner the disposal of his interest in the partnership property will be treated as a purchase subject to SDLT by the remaining partners.

However, where the market value of the transfer is within the zero rate threshold (currently £150,000 for commercial property and £60,000 for residential property) then the transaction is not notifiable.

Rented property used by the business is also caught by these regulations but in most instances will be covered by the exemption that excludes leases at market

rent, which are subject to at least five yearly rent reviews to market rent.

All the partners are responsible for SDLT compliance unless a partner has been nominated to the Inland Revenue as the partner responsible.

Should you require specialist assistance in dealing with SDLT issues on partnership interests in land, or any other issues, such as lease duty, then please contact Graham Sherling on 01923 809407 or email graham.sherling@hhllp.co.uk

Solicitors Accounts Rules - recent changes

A handful of amendments to the Rules have been passed recently of which you should be aware:

- 1 **Rule 15 note (ix)** Use of client account now states that it is not a proper part of a solicitors' everyday business to operate banking facilities for third parties, whether they are a client or not. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if a deposit is taken in circumstances which do not form part of a solicitors practice.
- 2 **Rule 32 (10)** has been amended to permit digital images of paid cheques in place of the originals, whether by the bank or by the solicitor. Microfilmed copies of the paid cheques are not acceptable.
- 3 **New Rule 21(2)** on regular payments from the Legal Services Commission states that regular payments are to be treated as office money and must be paid into office account on receipt.



Additionally, within 28 days of submitting an interim/final report to the Commission notifying the stages of a matter the solicitor must either pay any unpaid professional disbursements or transfer the equivalent sum to client account.

The amended rules must be implemented by 1 May 2005 and until then practices may comply with the interim guidance.

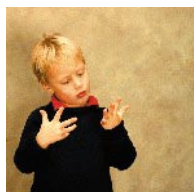
For further information on the amendments contact Cathy Leach on 01442 220746 or email cathy.leach@hhllp.co.uk

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Making the best of inheritance tax reliefs



Standard tax planning advice to clients fortunate enough to have assets which qualify for agricultural property relief (APR) or business property relief (BPR) is normally that

such assets should be left to non exempt beneficiaries. Assuming that the relief is at 100% and other assets are left to exempt beneficiaries, such as the surviving spouse, no inheritance tax (IHT) will be due on death. If subsequently the surviving spouse uses her assets to purchase the BPR/APR assets from her children it may well be possible for the same relief to be claimed on her death, whilst the non exempt assets are now safely in the hands of the children free of IHT.

But life is never as simple as that and few practitioners will have seen that blissful scenario. Often testators will want to leave the business to the surviving spouse for their well-being and continued security and comparatively modest assets contained within the nil rate band are passed to the children. Certainly, if the Will specifies that

the children are to receive the upper limit of the nil rate band then that is what they will receive.

Yet with a little imagination their tax-free inheritance can be enlarged. Section 39A IHTA 1984 provides that where property attracting APR/BPR relief is not specifically bequeathed, the relief must be apportioned between the residue and other legacies. This therefore enhances the amount that can be passed to the children provided that the Will is correctly worded. Assuming the definition of the nil rate band legacy refers to the largest amount that can be paid without incurring IHT then more than the current threshold of £263,000 could be transferred.

Take an example. Assume Tom dies owning BPR assets worth £1 million and other assets worth £500,000. In his Will he leaves to his children (or alternatively onto a discretionary trust) the largest amount possible which will avoid an IHT liability and the residue to his wife Mary. Section 39A then provides that the legacy of £263,000 should be divided by the proportion that the non BPR assets bears to the total estate. In this case the

proportion is 33% and that divided into the nil rate band produces an increased legacy of £789,000. Of course, it is then up to the executors to decide how to satisfy this increased legacy of £789,000 to the children. Tom may have anticipated that all the business would go to his widow who would also receive some of the non business assets. The correct interpretation of the legislation means that the legacy to the children is substantially enhanced and the residue correspondingly reduced.

So the moral of the tale is that section 39A can be used to great advantage to substantially increase the nil rate band legacy. But like all tax advantages it is essential that the documentation (in this case the Will) is correctly drafted to achieve the intended result. How many Wills have been drafted that do not achieve the intended result?

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Why am I not writing about Pensions Simplification?

The new pensions simplification legislation is due to come into force in April 2006 and represents the most radical overhaul of pensions legislation in at least a generation. I am not writing about it because:

- a) If your letterbox and inbox are anything like mine, you are already receiving five mailings a day on this – and some are very informative.
- b) The Finance Act has only just received Royal Assent. There will be a huge number of regulations to be debated, added and subtracted and we do not know what the effect of these alterations will be.
- c) The generic advice is simple – high earners (at least £80,000 a year) and those with high value pension schemes (say greater than £1,000,000) should seek immediate bespoke advice. (Those expecting less than 25% of their fund as tax free cash and those drawing benefits from ages 50 to 55 should also consider taking advice).

Instead I am going to mention trusts again.

From 6 April 2004 the rate of tax for trusts increased to 40% from 34%. This rate applies to the income of discretionary trusts and the capital gains of discretionary and interest in possession trusts. The rate applicable to dividends has also increased to 32.5% from 25%.

These changes will not affect the net income of beneficiaries where income is paid out but it will adversely affect the net income accumulated within a trust.

There are several possible planning strategies.

The most obvious is for the trustees to exercise their power of appointment and give the beneficiaries an absolute interest. As usual, I will recommend caution here. Trustee decisions based solely on reducing tax liabilities is a classic example of the tax tail wagging the investment dog. Trustees should establish what the right thing is to do – not easy given the onerous requirements of the Trustee Act 2000 – and then seek to arrange that transaction in the most tax efficient manner. For example when a trust transfers an asset to a beneficiary the trustees can often claim hold-over relief. This may result in a lower



net tax bill if the asset in question is later sold. In any event, the payment date for the tax liability is deferred.

When trustees are accumulating income, the vehicle that holds the investments can make a huge difference to the income that the trust can retain. The unsung hero is the insurance bond. Many discretionary trusts have invested in stocks and shares. Generally the income from these assets will be taxed at these new increased rates. If the stocks and shares are however held in an insurance bond and “income” is

accumulated then no further tax is payable during the accumulation period. This is because insurance bonds are not income producing assets. Over the years this advantage can be huge. Year to year, insurance bonds are 67% more tax efficient (in respect of accumulating dividends) than unit trusts and direct stock holdings.

But what happens when payments are made to beneficiaries? The details are beyond this brief article but do not forget the possibility of assigning a bond to a beneficiary and then having the beneficiary cash the bond in. The assignment of the bond will not be a chargeable event and if the beneficiaries then cash the bond, any gain will be assessed on them at their personal rates. If the beneficiaries are basic rate tax payers or less – students perhaps, the trustees have produced a very significant gain rather tax efficiently while at the same time not letting tax consideration rule when and how investments are distributed.

The above article is necessarily general and no one trust is exactly like another. Professional advice is encouraged by the Trustee Act 2000. I wonder whether the trustees could ever be liable for failing to invest in the most tax efficient vehicle available?

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Form 42

The requirement to submit form 42 was hidden away in the depths of Schedule 22 to the Finance Act 2003. The first most people had heard of it was when the news hit various accounting websites in early June 2004, despite the fact that the form was initially supposed to have been submitted by 6 July 2004.

This deadline has subsequently twice been extended, where no form was actually issued to the company. Firstly to 7 September and latterly to 30 November.

So what needs to be reported on form 42? Well, as is the Revenue's wont, this appears to be another sledgehammer to crack a nut. There is a requirement to complete the form broadly where an employee acquires a security by reason of his or her employment (the specifics can be found at sections 421J-L, ITEPA 2003).

This includes the situation where a company is newly incorporated in the year, where the shareholder is an employee or prospective employee and the reporting requirements include a valuation of the shares in question. In practise, it is likely that most forms will be completed on the basis that such shares are valued at par, and consequently there will be no tax arising. Even in the simplest cases it is a moot point whether or not this is correct and in more complex situations where a company has a trading history, great care should be taken in arriving at the market value.

Should you have any queries on this matter, please contact Joel Harding at our Watford office on 01923 809414 or email joel.harding@hhllp.co.uk



The new "direct tax disclosure" regime

The new "direct tax disclosure" regime was introduced in the Finance Act 2004. Presently the regime only applies to employment-related schemes and schemes relating to certain kinds of financial products. In practice, the regime is likely to apply to a far greater range of arrangements than most anticipated.

Promoters of schemes have to make disclosure of current schemes by 30 September 2004.

The obligation to notify falls on the 'promoter' or (in some cases) the taxpayer.

There is an obligation to notify the Revenue if arrangements (or a proposal); fall within any of the descriptions in Treasury regulations, and enable any person to obtain a tax advantage, and the main, or a main, benefit of the arrangements is the obtaining of that advantage.

A promoter must notify the Revenue within five business days of the earlier of making the scheme available for implementation and becoming aware that a transaction forming part of notifiable arrangements has been implemented.

For advisers such as lawyers and accountants, it is unclear as to when exactly such arrangements are made available and compliance within such a short time frame may be difficult.

A client must give the same information and identify any promoter.

Sufficient information will need to be given to the Inland Revenue 'to comprehend the manner in which the arrangements ... are intended to operate'. This information should include a summary of the proposal; an explanation of the significance of each step; and an indication of relevant legal provisions. Taxpayers will need to inform the Revenue of a reference number received either from a promoter or directly from the Revenue and to indicate when the tax advantage is expected to be obtained.

The regulations require more detailed information than many had anticipated. This will have cost implications for advisers and their clients, especially where more than one promoter is involved.

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