

Stamp duty land tax: transfers of rights

Who is likely to be affected?

Persons who acquire land in the UK under arrangements involving a transfer of rights.

General description of the measure

The stamp duty land tax (SDLT) rules for transfers of rights are being reformed to minimise arguments that they can be used for SDLT avoidance.

Policy objective

The transfer of rights rules have frequently featured in attempted avoidance of SDLT. The objective of the proposed reform is to make the rules more clearly robust against attempted avoidance while retaining the commercial benefits of the rules. This measure is part of the wider Government programme for tackling SDLT avoidance and making the tax system fairer.

Background to the measure

This measure was announced at Budget 2012. A consultation document was published on 17 July and the formal consultation period closed on 9 October. A consultation response document was published on 11 December 2012 alongside draft legislation.

Detailed proposal

Operative date

The new rules will apply to transactions with an effective date on or after Royal Assent to Finance Bill 2013.

Current law

The primary legislation for SDLT is in Part 4 of the Finance Act 2003 (FA 2003). The transfer of rights rules are at section 45 and section 45A.

In a typical transfer of rights, a person (the original vendor) enters into an agreement with the 'transferor' for the sale and purchase of UK land which is to be completed by a conveyance. The transferor then enters into another transaction (the transfer of rights) with another person (the transferee) as a result of which the transferee can call for a conveyance of that land. The current law achieves two broad outcomes where there is a transfer of rights. The transferee is charged tax on a single land transaction which is an amalgam of the transfer of rights and the ultimate acquisition of the land. Any acquisition by the transferor is disregarded as long as it is completed at the same time and in connection with the acquisition by the transferee.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to amend and supplement the transfers of rights rules in Finance Act 2003. The new rules will generally produce the same overall SDLT outcome as the current rules in normal commercial transactions, but will be more robust against attempted avoidance.

The position for the transferee will remain very similar to now: the transferee will be charged to SDLT on the aggregate of its purchase price for the land and any separate sum paid for

the transfer of rights agreement. However anti-avoidance measures will include a minimum consideration rule for transactions where the transferor and transferee are connected or act on non-arm's length terms, to ensure the full price paid to the vendor is charged to SDLT.

The transferor will be regarded as making an acquisition for SDLT purposes and will need to make a return. This contrasts with the current position where the transferor's acquisition may be disregarded. The transferor will be able to claim full relief against any SDLT in normal cases where it assigns its rights or enters into a sub-sale transaction with no SDLT avoidance purpose.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact. This measure supports the Exchequer in its commitment to protect revenue.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	The impact of any changes will be limited to individuals who undertake a transfer of rights. Under these proposals, they will have to make a land transaction return containing a claim for relief; currently no such return or claim is necessary. The Government expects only small numbers of individuals to be affected (other than those attempting to avoid tax).					
Equalities impacts	None of the policy changes proposed is expected to have an impact on any people with protected characteristics.					
Impact on business including civil society organisations	The impact of any changes will be limited to businesses and organisations involved in a transfer of rights. Under these proposals, they will have to make a land transaction return containing a claim for relief; currently no such return or claim is necessary. It has been very difficult to ascertain how many businesses and organisations are likely to be affected. Our best estimate is that the number of additional returns each year is likely to be of the order of 1,000. The overall administrative burden is considered negligible.					
Operational impact (£m) (HMRC or other)	The operational impact on HM Revenue & Customs is not expected to be significant.					
Other impacts	<p><u>Small firms impacts test:</u> this measure will apply to small firms in the same way that it does to other persons. The possible impact on small firms was queried during consultation but no impacts were identified. The overall impact on small firms is considered to be negligible in terms of administrative and compliance costs.</p> <p>Other impacts have been considered and none have been identified.</p>					

Monitoring and evaluation

The measure will be monitored through disclosures of new avoidance schemes to circumvent the measure, and through regular communication with affected taxpayers and practitioners.

Further advice

If you have any questions about this change, please contact Jeremy Schryber on 020 7147 2788 (email: jeremy.schryber@hmrc.gsi.gov.uk).

1 Contract and conveyance: transfers of rights

Schedule 1 contains provisions about the taxation of certain assignments, subsales and other transactions relating to a contract that is to be completed by a conveyance.

SCHEDULE 1

Section 1

STAMP DUTY LAND TAX: TRANSFERS OF RIGHTS

- 1 Part 4 of FA 2003 (stamp duty land tax) is amended as follows.
- 2 (1) Section 45 (contract and conveyance: effect of transfer of rights) is amended as follows.
 - (2) For subsection (1) substitute –
 - “(1) Subsections (1ZA) to (1ZF) give the meaning of “transfer of rights” and some related expressions in sections 45ZA to 45ZK (and in this section).
 - (1ZA) There can be a “transfer of rights” only where a contract for the acquisition by a person of a chargeable interest is entered into under which the acquisition is to be completed by a conveyance (that is, where section 44 applies).
 - (1ZB) “Transfer of rights” means an assignment, subsale or other transaction that meets these conditions –
 - (a) the transaction is entered into when the original contract has yet to be completed by a conveyance;
 - (b) as a result of the transaction, a person other than the original purchaser becomes entitled to call for the whole or part of the subject-matter of the original contract to be conveyed to that person.(Accordingly, a transaction that itself effects the acquisition of the whole or a part of the subject-matter of the original contract is not a “transfer of rights”.)
 - (1ZC) If the entitlement mentioned in subsection (1ZB) is an entitlement to exercise rights under the original contract that have been assigned by the transfer of rights, that transfer of rights is an “assignment of contractual rights”.
 - (1ZD) In subsection (1ZB) the reference to an assignment, subsale or other transaction does not include the grant or assignment of an option.
 - (1ZE) Where there is a transfer of rights –
 - (a) “the original contract” means the contract referred to in subsection (1ZA);
 - (b) “the original purchaser” means the person referred to in subsection (1ZA);
 - (c) “the subject-matter of the original contract” means the chargeable interest referred to in subsection (1ZA) (together with any interest or right appurtenant or pertaining to it that is to be acquired under the contract);
 - (d) “the subject-matter of the transfer of rights” means the chargeable interest the conveyance of which a person is

entitled to call for as a result of the transfer of rights (together with any interest or right appurtenant or pertaining to it that it is appropriate to treat as included in that subject-matter);

- (e) “transferee” means the person entitled to call for a conveyance (to that person) as a result of the transfer of rights;
- (f) “transferor” means the person who disposes of, or agrees to dispose of, the interest or rights as a result of which the transferee is so entitled.

(1ZF) References to “part of the subject-matter of the original contract” –

- (a) are to a chargeable interest (an “interest in part of the land”) that is the same as the chargeable interest referred to in subsection (1ZA) except that it relates to part only of the land concerned, and
- (b) include, so far as appropriate, interests or rights appurtenant or pertaining to the interest in part of the land.”

(3) Omit subsections (1A) to (5A).

(4) In subsection (6), for “subsection (3)(b)(i)” substitute “sections 45ZA to 45ZK”.

(5) In subsection (7), after “this section” insert “and sections 45ZA to 45ZK”.

(6) After subsection (7) insert –

“(8) Sections 45ZA to 45ZK do not apply where paragraph 12B of Schedule 17A (assignment of agreement for lease) applies.”

(7) For the heading of that section substitute “**Transfers of rights: introduction**”.

3 After section 45 insert –

“45ZA Transfer of rights not a land transaction

A person is not regarded as entering into a land transaction by reason of a transfer of rights.

45ZB Assignments of contractual rights: treatment of the transferee

- (1) Where there has been an assignment of contractual rights, the original contract is taken for the purposes of section 44 to be substantially performed if –
 - (a) the transferee, or a person connected with the transferee, takes possession of the whole, or substantially the whole, of the subject-matter of the original contract, or
 - (b) a substantial amount of the consideration is provided by the transferee or a person connected with the transferee, or
 - (c) consideration provided by a person within paragraph (b) amounts, when taken together with consideration provided by another person, to a substantial amount of the consideration.

Substantial performance of a contract for a land transaction by the means described in this subsection is referred to as substantial performance of the contract “by the transferee”.

- (2) Where there has been an assignment of contractual rights and the original contract is substantially performed by the transferee, the transferee is taken to be the purchaser under the transaction treated (under section 44(4)) as being effected by that substantial performance.
- (3) Where there has been an assignment of contractual rights and the subject-matter of the original contract is conveyed to the transferee, the conveyance is taken to effect the completion of the original contract (despite section 44(10)).
- (4) Where subsection (2) or (3) applies, the chargeable consideration for the land transaction concerned is determined in accordance with subsection (5).
- (5) Schedule 4 is to be read as if paragraph 1(1) of that Schedule provided that the chargeable consideration is the total of—
 - (a) any consideration in money or money's worth given (directly or indirectly) by the transferee or a person connected with the transferee in respect of the subject-matter of that contract, and
 - (b) any consideration given by the transferee or a person connected with the transferee for the assignment of contractual rights.
- (6) Subsection (6) of section 44 applies in relation to subsection (1)(a) as it applies for the purposes of subsection (5)(a) of that section and subsection (7) of section 44 applies in relation to subsection (1)(b) and (c) as it applies in relation to subsection (5)(b) of that section.
- (7) Subsection (1) should not be read as implying that the original contract may not be substantially performed otherwise than by the transferee.

45ZC Assignments of contractual rights: transferor treated as making separate acquisition

- (1) Where section 45ZB(2) applies, this Part has effect as if—
 - (a) the effective date of the land transaction mentioned in that subsection were also the effective date of a land transaction (a “notional land transaction”), and
 - (b) the original purchaser were the purchaser under that transaction.
- (2) Where section 45ZB(3) applies, this Part has effect as if—
 - (a) the effective date of the land transaction concerned were also the effective date of a land transaction (a “notional land transaction”), and
 - (b) the original purchaser were the purchaser under that transaction.
- (3) For the purpose of determining the chargeable consideration for the notional land transaction mentioned in subsection (1) or (2), Schedule 4 has effect as if paragraph 1(1) of that Schedule provided that the chargeable consideration is any consideration in money or money's worth given (directly or indirectly) by any person in respect of the subject-matter of the original contract.

- (4) If the transferee was entitled to call for the conveyance as a result of successive assignments of rights under the original contract, subsections (1) and (2) apply to each intermediate transferor as they apply to the original purchaser.
- (5) A person (other than the original purchaser) is an “intermediate transferor” for the purposes of subsection (4) if the transferee’s entitlement to call for a conveyance of the subject-matter of the original contract (see section 45(1ZB)(b)) is an entitlement to exercise rights that have been transferred to the transferee (directly or indirectly) by that person.
- (6) In relation to a land transaction treated as taking place under this section –
 - (a) references in Schedule 7 (group relief) to the vendor are to be read as references to the vendor under the original contract, and
 - (b) other references in this Part to the vendor are to be read, where the context permits, as referring to either the vendor under the original contract or the transferor.

45ZD Notional land transactions: subsequent events

- (1) Where section 45ZC(1) applies and the original contract (see section 45ZB(2)) is subsequently completed by a conveyance, tax is charged on the land transaction effected by the conveyance to the extent (if any) that the amount of tax chargeable on it is greater than the amount of tax chargeable on the notional land transaction.
- (2) Where section 45ZC(1) applies and the original contract is (to any extent) afterwards rescinded or annulled, or is for any other reason not carried into effect, the tax paid by virtue section 45ZC(1) must (to that extent) be repaid by HMRC.

45ZE Transferee’s acquisition: other cases

- (1) “Free-standing transfer of rights” means a transfer of rights other than an assignment of contractual rights.
- (2) Subsection (3) applies if a person entitled, as a result of a free-standing transfer of rights, to acquire the subject-matter of the transfer of rights acquires (or is treated under section 44(4) as acquiring) that subject-matter.
- (3) The consideration for the transaction effecting that acquisition (or deemed acquisition) is taken to include the consideration given for the transfer of rights (if that would not otherwise be the case).
- (4) If a person entitled, as a result of a free-standing transfer of rights, to acquire the subject-matter of the transfer of rights (or a person connected with such a person) takes action that would, if taken by the original purchaser, constitute the taking of possession of the whole or substantially the whole of the subject-matter of the original contract for the purposes of section 44(5), the transferee’s action is treated as effecting the substantial performance of the original contract.

- (5) If the transfer of rights mentioned in subsection (4) is a transfer of rights in relation to more than one contract such as is mentioned in section 45(1ZA), subsection (4) is to be applied in relation to each such contract.
- (6) The reference in subsection (4) to a person entitled as a result of a free-standing transfer of rights to acquire the subject-matter of the transfer of rights includes a person who has acquired the entitlement to exercise that entitlement (under the free-standing transfer of rights) as a result of one or more assignments of contractual rights.

45ZF Minimum consideration rule

- (1) This section applies if—
 - (a) there is a transfer of rights (“the beneficial transfer of rights”),
 - (b) the subject-matter of the transfer of rights is conveyed to the transferee, or the transfer of rights is substantially performed by the transferee, and
 - (c) the connection condition is met.
- (2) The connection condition is that—
 - (a) the transferor and transferee are connected with each other or are not acting at arm’s length, or
 - (b) (if the beneficial transfer of rights is one in a series of transfers of rights) any person who is the transferor in relation to a transfer of rights that precedes the beneficial transfer of rights in the series is connected with, or not acting at arm’s length in relation to, the transferee under the beneficial transfer of rights.
- (3) The amount of the consideration for the relevant land transaction is taken to be the greatest amount that is equal to one (or more) of the following—
 - (a) the amount that would be the amount of that consideration apart from this subsection;
 - (b) the first minimum amount;
 - (c) the second minimum amount.
- (4) In subsection (3) “the relevant land transaction” means—
 - (a) if the beneficial transfer of rights is an assignment of contractual rights, the land transaction referred to in section 45ZB(2) or, as the case requires, the land transaction effected by the conveyance referred to in section 45ZB(3);
 - (b) otherwise, the land transaction effected by the conveyance mentioned in subsection (1)(b), or treated as effected by the substantial performance mentioned in subsection (1)(b).
- (5) A transfer of rights is taken to be substantially performed by a transferee if—
 - (a) the transferee, or a person connected with the transferee, takes possession of the whole, or substantially the whole, of the subject-matter of the original contract, or
 - (b) a substantial amount of the consideration is provided by the transferee or a person connected with the transferee, or

- (c) consideration provided by a person within paragraph (b) amounts, when taken together with consideration provided by another person, to a substantial amount of the consideration.
- (6) Subsection (6) of section 44 applies in relation to subsection (5)(a) as it applies for the purposes of subsection (5)(a) of that section and subsection (7) of section 44 applies in relation to subsection (5)(b) and (c) as it applies in relation to subsection (5)(b) of that section.

45ZG Section 45ZF: calculation of minimum amounts

- (1) “The first minimum amount” means –
- (a) if the chargeable interest acquired (or treated as acquired) is the whole subject-matter of the original contract, the amount that under the terms of the original contract is the consideration payable for the acquisition of that subject-matter; or
 - (b) otherwise, so much of the amount mentioned in paragraph (a) as is referable, on a just and reasonable apportionment, to the chargeable interest mentioned in paragraph (a).
- (2) “The second minimum amount” means the total of the net amounts of consideration given by the relevant parties.
- (3) The net amount of consideration given by any relevant party is –

$$CP - CR$$

where –

CP is the total amount of consideration given by the party for the acquisition of the chargeable interest or as consideration for a transfer of rights;

CR is the total of any amounts of consideration given to the party by another relevant party (or other relevant parties) as consideration for the acquisition of the chargeable interest or as consideration for a transfer of rights.

If CR is greater than CP, the net amount of consideration given by the relevant party is taken to be zero.

- (4) The following are relevant parties for the purposes of this section –
- (a) the original purchaser,
 - (b) the transferee (or, if the beneficial transfer of rights is one in a series of transfers of rights, the transferee under the beneficial transfer of rights and each preceding transferee).
- (5) For the purposes of subsection (4) –
- (a) amounts paid by a person connected with a relevant party are treated as paid by the relevant party;
 - (b) amounts paid to a person connected with a relevant party are treated as paid to the relevant party.

- (6) If the subject-matter of the beneficial transfer of rights is not the whole subject-matter of the original contract, or is not the whole subject-matter of a transfer of rights that precedes the beneficial transfer of rights in a series of such transfers, then –
- (a) the amounts that are taken for the purposes of subsection (3) to be given “for the acquisition of the chargeable interest” are to be determined on a just and reasonable basis, and
 - (b) only so much of the consideration for a preceding transfer of rights as is referable, on a just and reasonable apportionment, to the subject-matter of the beneficial transfer of rights is taken into account under subsection (3).

45ZH Relief for original purchaser: assignment of contractual rights

- (1) This section applies where –
- (a) there has been an assignment of contractual rights,
 - (b) the original contract had not been substantially performed when that assignment was entered into,
 - (c) as a result of the completion or substantial performance of the original contract, the original purchaser is treated under section 45ZC as the purchaser under a notional land transaction, and
 - (d) the land transaction effected by the completion or substantial performance of the original contract is not exempt from charge by virtue of any of sections 71A to 73 (which relate to alternative property finance).
- (2) The notional land transaction is exempt from charge.
- (3) Any relief under subsection (2) must be claimed in a land transaction return or an amendment of such a return.
- (4) In this section “substantially performed” has the same meaning as in section 44 (read with section 45ZB(1)).

45ZI Relief for original purchaser: other cases

- (1) This section applies where –
- (a) there has been a transfer of rights that is a qualifying subsale,
 - (b) the original contract had not been substantially performed when the transfer of rights was entered into,
 - (c) the original purchaser would, in the absence of this section, be liable to pay tax in respect of the completion or substantial performance of the original contract,
 - (d) the performance of the qualifying subsale takes place at the same time as, and in connection with, the performance of the original contract, and
 - (e) the transaction effected, or deemed to be effected, by the performance of the transfer of rights is not exempt from charge by virtue of any of sections 71A to 73.
- (2) If the subject-matter of the qualifying subsale is the whole of the subject-matter of the original contract, the land transaction is exempt from charge.

- (3) If the subject-matter of the qualifying subsale is part (but not the whole) of the subject-matter of the original contract, the amount of the consideration for the land transaction is taken to be –
 - (a) the amount that it would be apart from this subsection, less
 - (b) so much of that amount as is referable to the subject-matter of the qualifying subsale.
- (4) The amount mentioned in subsection (3)(a) may be reduced more than once under subsection (3) if there is more than one qualifying subsale.
- (5) Any relief under subsection (2) or (3) must be claimed in a land transaction return or an amendment of such a return.
- (6) For the purposes of this section –
 - (a) the original contract is taken to be “performed” when it is substantially performed or completed (whichever is earlier), and
 - (b) the transfer of rights is taken to be “performed” when the transferee acquires, or is treated under section 44(4) as acquiring, the subject-matter of the transfer of rights.
- (7) A transfer of rights is a “qualifying subsale” if it is a contract under which the original purchaser contracts to sell the whole or part of the subject-matter of the original contract to the transferee.
- (8) In this section –
 - “the land transaction” means the transaction effected by the completion of the original contract or deemed to be effected by the substantial performance of the original contract;
 - “substantially performed” has the same meaning as in section 44.

45ZJ Relief for second or subsequent transferors

- (1) The reference in section 45ZH(1)(c) to “the original purchaser” includes a person who is an intermediate transferor for the purposes of section 45ZC(4).
- (2) For the purposes of sections 45ZH and 45ZI it does not matter whether or not the original contract entered into by the original purchaser mentioned in subsection (1)(c) of the section concerned is itself a transfer of rights in relation to another original contract.

45ZK Tax avoidance arrangements

- (1) Relief is not given under section 45ZH or 45ZI if the transfer of rights referred to in subsection (1)(a) of the section concerned forms part of any tax avoidance arrangements.
- (2) Arrangements are “tax avoidance arrangements” if, having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage for the original purchaser or any other person was the main purpose, or one of the main purposes, of the original purchaser in entering into the arrangements.
- (3) In this section “tax advantage” means –
 - (a) a relief from tax or increased relief from tax,

- (b) a repayment of tax or increased repayment of tax,
 - (c) the avoidance or reduction of a charge to tax, or
 - (d) the avoidance of a possible assessment to tax.
 - (4) In this section “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable).
 - (5) Nothing in sections 45ZF and 45ZG (minimum consideration rule) or this section affects the breadth of the application of sections 75A to 75C (anti-avoidance).”
- 4 In section 119 (meaning of “effective date” of a transaction), in subsection (2), at the appropriate place insert –
“section 45ZC(1) and (2),”.

EXPLANATORY NOTE

STAMP DUTY LAND TAX: TRANSFERS OF RIGHTS

SUMMARY

1. This Schedule retains relief for intermediate purchasers where rights under a land transaction are transferred by way of an assignment of contractual rights and/or qualifying subsale and charges the end purchaser with stamp duty land tax (SDLT). It specifies the types of transfers of rights which qualify for relief and clarifies the legislation to protect against avoidance schemes which seek to circumvent the charge to SDLT.

DETAILS OF THE SCHEDULE

2. Paragraph 1 amends Part 4 of Finance Act 2003 (FA 2003) which applies to transfers of rights.
3. Paragraph 2 amends the transfers of rights rules applying to section 45 FA 2003.
4. Sub-Paragraphs (1) to (7) amend section 45(1) FA 2003 by substituting new subsections (1ZA) to (1ZF) which: (i) give the meaning of the term ‘transfers of rights’ and related terms; (ii) insert new sections 45ZA to 45ZK; and (iii) make other consequential amendments to section 45 FA 2003.
5. Paragraph 3 inserts new sections 45ZA to 45ZK. These sections set out how transfers of rights will be treated in future.
6. New Section 45ZA provides that entering into a contract for a transfer of rights does not in itself incur a charge to SDLT as a transfer of rights is not a land transaction.
7. New Section 45ZB deals with the treatment of the transferee in assignments of contractual rights and sets out what is meant by substantial performance by the transferee or a person connected with the transferee.
8. Subsection (1) sets out what is meant by substantial performance under section 44 FA 2003 by a transferee or a person connected with a transferee.
9. Subsection (2) provides that where there has been substantial performance by a transferee in an assignment of contractual rights the transferee will be treated as if it were the purchaser under section 44 FA 2003.

10. Subsection (3) provides that where the original contract is completed by a conveyance to the transferee the provisions of section 44 (10) are disregarded.
11. Subsections (4) and (5) provide that where there has been substantial performance by the transferee or the contract has been completed by a conveyance to the transferee the consideration will be: (i) any consideration given by the transferee or any person connected with them for the subject matter of that contract; and (ii) any consideration given for the transfer of rights.
12. Subsection (6) provides that section 44(6) and 44(7) FA 2003 concerning substantial performance applies to subsection (1) in relation to substantial performance by a transferee.
13. Subsection (7) provides that there should be no implication that the original contract may only be substantially performed by the transferee.
14. New Section 45ZC deems the transferor as making a separate acquisition (“the notional land transaction”) in an assignment of contractual rights.
15. Subsection (1) provides that where there has been an assignment of contractual rights and the original contract is substantially performed by the transferee the effective date of that land transaction is deemed to be the effective date of a notional land transaction and the original purchaser is the deemed purchaser under the notional land transaction.
16. Subsection (2) provides that where there has been an assignment of contractual rights and the original contract is completed by a conveyance, the effective date of that land transaction is deemed to be the effective date of the notional land transaction and the original purchaser is the deemed purchaser under the notional land transaction.
17. Subsection (3) provides that the chargeable consideration for a notional land transaction is any consideration given in respect of the subject matter of the original contract.
18. Subsection (4) provides that where there are successive assignments of contractual rights the deeming provisions under subsections (1) and (2) apply to each intermediate transferor as they apply to the original purchaser so that there is a deemed notional land transaction for each with a deemed amount of chargeable consideration for each transaction.

19. Subsection (5) defines what is meant by an intermediate transferor. An intermediate transferor is any person (other than the original purchaser) who has transferred to a transferee the rights held by that person so that the transferee is entitled to call for the conveyance of the subject matter of the original contract.
20. Subsection (6) ensures that any references to the vendor will be read as the vendor under the original contract.
21. New Section 45ZD deals with events occurring subsequent to a notional land transaction.
22. Subsection (1) provides that where the original contract has been substantially performed and is subsequently completed by a conveyance, further tax will be chargeable if that amount is greater than the tax chargeable on the notional land transaction.
23. Subsection (2) provides that where there is a conveyance to the transferee and the original contract is rescinded or annulled any tax paid in respect of a notional land transaction will be repaid.
24. New Section 45ZE deals with all other transfers of rights that are not assignments of contractual rights.
25. Subsection (1) provides a definition of contracts for transfers of rights which are not assignments of contractual rights.
26. Subsection (2) deals with a person who is entitled to acquire the subject matter of a transfer of rights which is not by way of an assignment of contractual rights.
27. Subsection (3) provides that where a person is entitled to acquire the subject matter of a transfer of rights which is not by an assignment of contractual rights, then the consideration will include the consideration given for the transfer of rights.
28. Subsection (4) provides that where action is taken which constitutes taking possession of the whole or substantially the whole of the subject-matter of the contract the rules for substantial performance under section 44(5) FA 2003 apply.
29. Subsection (5) provides that each successive transfer of rights in a series of transfers of rights under this subsection is a separate contract to which section 44 FA 2003 applies and in relation to each contract subsection (4) applies with regard to substantial performance for each such contract.
30. Subsection (6) provides that references in subsection (4) also apply to someone who becomes entitled as a result of an assignment to

exercise rights under a transfer of rights which is not an assignment of contractual rights, for example where there is a series of assignments of contractual rights and other transfers of rights.

31. New Section 45ZF provides for a minimum consideration rule when the parties are connected or not acting at arm's length.
32. Subsection (1) provides that the minimum consideration rule applies: (i) where there is a transfer of rights; (ii) where the subject matter of the transfer of rights is conveyed to the transferee or where the contract for the transfer of rights is substantially performed by the transferee; and (iii) where the parties are connected or not acting at arm's length.
33. Subsection (2) provides that the connectedness conditions apply to transfers in a series of transfers of rights preceding the beneficial transfer of rights.
34. Subsection (3) provides that where parties are connected or not acting at arm's length the amount of consideration is taken to be the greater of: (i) the amount paid by the acquirer (ii) the amount of consideration given by the original purchaser; (iii) the total of the net amounts given by the relevant parties. Where any of those amounts equally represent the greatest amount then any of those equal amounts can be taken as the greatest amount.
35. Subsection (4) defines what is meant by "the relevant transaction". "Relevant transaction" is defined as: (i) an assignment of contractual rights within section 45ZB (2) and (3) where substantial performance has occurred or has been completed by a conveyance; or (ii) a land transaction effected by substantial performance or completed by a conveyance.
36. Subsection (5) sets out what circumstances would amount to substantial performance.
37. Subsection (6) provides that section 44(6) and 44(7) FA 2003 regarding substantial performance, applies to subsection (5) in relation to substantial performance by a transferee or any person connected with them.
38. New section 45ZG provides for the calculation of minimum consideration amounts.
39. Subsection (1) provides that the first minimum amount means the amount of consideration under the original contract or for transfers of part as reasonably apportioned.

40. Subsection (2) provides that the second minimum amount is the total of the net amounts of consideration given by all the relevant parties under the formula in subsection (3).
41. Subsection (3) sets out the formula for ascertaining the minimum consideration. It deducts the amount of consideration given by a party for the acquisition of the chargeable interest (including where applicable the transfer of rights) from the amount of consideration given to that party for the chargeable interest (including the transfer of rights). The amount given to that party will not be allowed to reduce the final figure below nil. The subsection also requires that this calculation is carried out for each party.
42. Subsection (4) provides that the relevant parties for the purposes of the calculation are the original purchaser, the transferee and any successive transferees.
43. Subsection (5) provides that amounts given by connected parties and those not acting at arm's length are also included.
44. Subsection (6) provides that amounts of consideration given in respect of transfers of a part will be adjusted accordingly.
45. New Section 45ZH sets out the conditions for relief in the case of assignments of contractual rights.
46. Subsection (1) provides that relief is available where: (i) there is an assignment of contractual rights; (ii) the original contract is not substantially performed before the transfer of rights; (iii) the original purchaser is deemed a purchaser of a notional land transaction; and (iv) the land transaction is not exempt from charge by reason of the alternative property finance rules. .
47. Subsection (2) provides that if the conditions in subsection (1) are met then the notional land transaction is exempt from tax.
48. Subsection (3) provides that relief must be claimed by the submission of a land transaction return.
49. Subsection (4) provides that substantial performance has the same meaning as in section 44 FA 2003 and section 45ZB(1)
50. New Section 45ZI sets out the conditions for relief in the case of qualifying subsales.
51. Subsection (1) provides that relief is available where: (i) there is a qualifying subsale; (ii) the original contract was not substantially performed before the transfer of rights; (iii) the original purchaser would except for this section be liable for tax; (iv) the performance of the qualifying subsale takes place at the same time as the

performance of the original contract; and (v) the land transaction is not exempt from charge by reason of the alternative property finance rules.

52. Subsection (2) provides that where the qualifying subsale is the whole of the subject matter of the original contract the land transaction is exempt.
53. Subsection (3) provides that in qualifying subsales of part of the subject matter of the original contract the amount of consideration taken into account is reduced accordingly.
54. Subsection (4) provides that the reduction in tax for qualifying subsales of part of the subject matter of the original contract applies to qualifying subsales of each part of the subject matter of the original contract.
55. Subsection (5) provides that relief must be claimed by the submission of a land transaction return.
56. Subsection (6) provides that in subsection (1) the original contract is treated as “performed” at the earlier of: (i) substantial performance; or (ii) completion. The transfer of rights is “performed” when the transferee acquires or is treated as acquiring the subject matter.
57. Subsection (7) defines what is meant by a qualifying subsale.
58. Subsection (8) defines what is meant by a “land transaction” as being the completion or substantial performance of the original contract, and defines what is meant by “substantially performed” as having the same meaning as in section 44 FA 2003.
59. New Section 45ZJ deals with relief for second or subsequent transferors.
60. Subsection (1) provides that references to the original purchaser also include intermediate transferors.
61. Subsection (2) provides that the original contract can also be a transfer of rights of another original contract.
62. New Section 45ZK provides a test to ascertain whether the purpose of the transaction is for the avoidance of tax.
63. Subsection (1) provides that relief is not available under section 45ZH, 45ZI or 45ZJ (where there are a series of transfers of rights) if the transfer of rights is part of any tax avoidance arrangements.

64. Subsection (2) defines what is meant by tax avoidance arrangements as being where the main purpose or one of the main purposes is the obtaining of a tax advantage.
65. Subsection (3) defines what is meant by a tax advantage.
66. Subsection (4) defines what is meant by arrangements.
67. Subsection (5) provides that (for the avoidance of doubt) nothing in section 45ZF regarding the minimum consideration rule for connected parties, and the calculation of the minimum consideration amounts in section 45ZG affects the breadth of sections 75A-75C FA 2003 (anti-avoidance rules).
68. Paragraph 4 is a consequential amendment of section 119 FA 2003 dealing with the effective dates of certain land transactions

BACKGROUND

69. The Government announced in Budget 2012 that it would bring forward legislation in the Finance Bill 2013 to amend and supplement section 45 FA 2003. A consultation document was published on 17 July and closed on 9 October 2012. A consultation response document was published on 11 December alongside the draft legislation.
70. The current law achieves two broad outcomes where a transfer of rights takes place. The transferee is charged tax on a single land transaction which is an amalgam of the transfer of rights and the ultimate acquisition of the land. Any acquisition by the transferor is disregarded if it is completed at the same time and in connection with the acquisition by the transferee.
71. The draft clause broadly produces the same outcome as the current rules, but is more robust against attempted avoidance.
72. The amendments give relief to assignments of contractual rights and qualifying subsales. They set out what is meant by a transfer of rights and how assignments of contractual rights and subsales are to be treated. In assignments of contractual rights and subsales the transferor will be regarded as making an acquisition of chargeable interest for SDLT purposes and will need to make a land transaction return in order to be able to claim relief. The transferor will be able to make a claim for full relief in certain circumstances.
73. The position for the transferee will remain broadly the same with the exception of the introduction of anti-avoidance measures which include: (i) minimum consideration rules for connected parties or non-arm's length transactions; and (ii) an avoidance purpose test.

FINANCE BILL

74. If you have any questions about this change, or comments on the legislation, please contact Jeremy Schryber on 020 7147 2788 (email: jeremy.schryber@hmrc.gsi.gov.uk)