



**HM Revenue
& Customs**

**Draft guidance on the reform of the SDLT
transfer of rights rules**

Draft Guidance
28 March 2013

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Chapter 1 Introduction

- 1.1 The Government announced at Budget 2012 that it would consult on the reform of the stamp duty land tax (SDLT) “transfer of rights” rules. Following a formal consultation period, legislation was included in the draft Finance Bill on 11 December 2012. Following further consultation on the draft Bill, legislation was included in the Finance Bill published on 28 March 2013.
- 1.2 This document contains draft guidance on the new regime for transfers of rights, which will be known in future as “pre-completion transactions”. The final version of this guidance will ultimately be incorporated into the SDLT Manual available on the HMRC website. HMRC would welcome any comments on how this draft guidance could be improved or extended.
- 1.3 Chapter 2 contains general guidance as to how the new rules work. Chapter 3 contains examples of how the rules apply to various scenarios. Unless otherwise specified, all statutory references are to the Finance Act 2003.
- 1.4 Please send comments and questions by email to Budget2013.stamptaxes@hmrc.gsi.gov.uk or contact Jeremy Schryber on 020 7147 2788.

Chapter 2 General guidance

Pre-completion transactions

- 2.1 From date of Royal Assent, section 45 as it applied before that date to transfers of rights was replaced by new provisions for pre-completion transactions.
- 2.2 The starting point for a pre-completion transaction is that there must be a contract for a land transaction within section 44: a contract that is to be completed by a conveyance. Before that “original contract” is substantially performed or completed, the purchaser under that contract may enter into a further agreement as a result of which another person is entitled to call for the conveyance of all or part of the subject-matter of the original contract. Such an agreement is a pre-completion transaction.

Outline of legislation

- 2.3 Section 45 introduces Schedule 2A which contains provisions about pre-completion transactions. Unless otherwise specified, references to paragraphs are to paragraphs of Schedule 2A. The Schedule can be broken down into different areas.

Paragraphs 1-3	Introductory
Paragraphs 4-8	Assignments of rights
Paragraphs 9-11	Free-standing transfers
Paragraphs 12-14	Minimum consideration rule
Paragraphs 15-18	Relief for the transferor
Paragraph 19	Power to make regulations
Paragraphs 20-21	Definitions and interpretation

- 2.4 Paragraphs 1-3 – Introductory: These paragraphs define a pre-completion transaction and make a distinction between assignments of rights and other pre-completion transactions (known as free-standing

transfers). They also state that the transferee is not regarded as entering into a land transaction by reason of the pre-completion transaction.

- 2.5 Paragraphs 4-8 – Assignments of rights: Paragraph 4 outlines how the transferee is treated. Broadly speaking, the consideration for the transferee's acquisition is whatever the transferee gives under the original contract plus whatever the transferee gives for the assignment.
- 2.6 The vendor for the transferee's acquisition is generally the original vendor under the original contract, although there are exceptions.
- 2.7 Paragraph 5 creates a "notional land transaction" for the transferor under an assignment (sub-paragraph (1)). If there are successive assignments, then there is also a notional "additional land transaction" for each additional subsequent transferor in the chain (sub-paragraph (2)). The consideration for a notional transaction is whatever the transferor signs up to give at the time of entering into the assignment as transferor, plus whatever the transferor gives for a previous assignment where relevant.
- 2.8 Paragraphs 9-11 – Free-standing transfers: Paragraph 9 concerns the transferee. It adds any consideration given for the pre-completion transaction to the consideration otherwise given by the transferee. As for assignments, the vendor for the transferee's acquisition is generally the original vendor, subject to certain exceptions.
- 2.9 Paragraphs 12-14 – Minimum consideration rule: The minimum consideration rule only applies where the ultimate purchaser is either connected with, or not acting at arm's length from, the transferor (or any other preceding transferor where there are successive pre-completion transactions). It can be ignored for all other (most) transactions.
- 2.10 Where the rule applies, it can increase the consideration for the ultimate purchaser's acquisition. If either of two "minimum amounts" is higher than the amount of consideration given by the normal rules, then the consideration is increased to the higher minimum amount. The first minimum amount is generally the amount due under original contract. The second minimum amount is given by a formula which includes the net amount given by each party (subject to certain exceptions) to the transactions.

- 2.11 Paragraphs 15-18 – Relief for the transferor: The transferor can claim full relief for its land transaction in certain circumstances. For relief to be available, the pre-completion transaction must be an assignment or subsale. And the pre-completion transaction must complete at the same time as the transferor's acquisition. Relief must be claimed in a land transaction return, or an amendment to such a return.
- 2.12 Relief is barred where it is reasonable to conclude that the transferor had a main purpose of securing a tax advantage for any person.

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Example 1 Simple assignments of rights

Ex 1.1 This is an example of how the rules apply to an assignment of rights.

- A enters into a sale and purchase agreement with B for some land with a consideration of £1m payable on completion.
- B assigns its rights under the contract to C for a payment of £100,000.
- C completes the acquisition and pays A £1m.

Ex 1.2 The intended outcome is that B should have to make a land transaction return for a transaction with consideration of £1m but can include a claim for full relief. C should have to make a land transaction return with consideration of £1.1m.

Ex 1.3 The transactions fall within Schedule 2A in the following way:

- The transactions fall within the definition of a pre-completion transaction in paragraphs 1(1) and (2).
- The pre-completion transaction is an “assignment of rights” that falls within paragraph 2(1).
- Under paragraph 1(1), 1(2) and 2(3): the original contract is the contract between A and B, the original purchaser is B, the transferee is C and the transferor is B.

- The transferee is not regarded as entering into a land transaction by reason of the pre-completion transaction (paragraph 3).

Ex 1.4 The position of the transferee, C, is covered mainly by paragraph 4.

- C is the purchaser under a land transaction under section 44(3) (paragraph 4(4)). Paragraph 4(2) provides that this is not prevented by the words “between the same parties” in section 44(10).
- Since paragraph 4(3)(a) is satisfied, paragraph 4(5) applies. Paragraph 4(5), read with paragraph 4(9), determines how paragraph 1 of Schedule 4 should be read to determine the chargeable consideration for C’s acquisition. The result is that both the £1m given to A and the £100,000 given to B are included – total £1.1m.

Ex 1.5 The position of the transferor, B, is covered mainly by paragraph 5, with relief available under paragraph 15.

- The transactions fall within paragraph 5(1). Under that sub-paragraph, B is deemed to be the purchaser under a notional land transaction with the same effective date as C’s land transaction.
- The consideration for B’s acquisition is dealt with in paragraph 5(3). That consideration is £1m as that is the consideration given by C to A in respect of the subject matter of the original contract (paragraph 5(5)(a)).
- The transactions fall within paragraph 15 so B can claim relief (subject to the conditions outlined in paragraph 15) under sub-paragraph (4).

Example 2 Subsale and minimum consideration rule

Ex 2.1 This is an example of a subsale. It also illustrates how the minimum consideration rule works where parties are connected.

- A enters into a sale and purchase agreement with B for some land with a consideration of £1m payable on completion.

- B enters into a sale and purchase agreement for the same land with C for consideration of £900,000 payable on completion.
- At a single completion meeting the sales from A to B and from B to C complete; consideration of £900,000 is paid by C to B and consideration of £1m is paid by B to A.

Ex 2.2 If B and C are unconnected and acting at arm's length, then the intended outcome is that B should have to make a land transaction return for a transaction with consideration of £1m but can include a claim for full relief. C should have to make a land transaction return with consideration of £900,000.

Ex 2.3 The transactions fall within the new legislation in the following way.

- The transactions fall within the definition of a pre-completion transaction that is a free-standing transfer (paragraph 1(1)-(2) and paragraph 2(2)).
- Under paragraph 1(1), 1(2) and 2(3): the original contract is the contract between A and B, the original purchaser is B, the transferee is C and the transferor is B.
- The transferee is not regarded as entering into a land transaction by reason of the pre-completion transaction (paragraph 3).

Ex 2.4 The pre-completion transaction is not an assignment of rights so paragraph 9 applies.

Ex 2.5 In the absence of any special provision, B is regarded as entering into a land transaction with A for consideration of £1m (section 44(3)).

Ex 2.6 The pre-completion transaction is a qualifying subsale under paragraph 16 and falls within the conditions set out in paragraph 16(1). So B can claim relief under sub-paragraph (6) (subject to the rest of the conditions set out in paragraph 16 and paragraph 18).

Ex 2.7 C's acquisition from B falls with section 44(3). The consideration is taken to include the consideration given for the free-standing

transfer (paragraph 9(2)), although that is nil in this case. So the consideration is just the £900,000 paid by C to B in the normal way.

Ex 2.8 If B and C were connected, then C's acquisition would be subject to the minimum consideration rule – paragraphs 12-14 – with the intended outcome that the chargeable consideration should be increased from £900,000 to £1m.

- The consideration for C's acquisition is taken to be the greatest of three amounts: either the £900,000 already determined above or the first minimum amount or the second minimum amount (paragraph 12(2)).
- The first minimum amount is defined in paragraph 13(1) (subject to paragraph 13(2)). In this case it is the £1m that was due under the contract between A and B.
- The second minimum amount is given by paragraph 14 and is the total of the net amounts of consideration (as determined in sub-paragraph (2)) given by the relevant parties (as per sub-paragraph (3) subject to sub-paragraph (4)). In this case, B and C are the relevant parties. The net amount of consideration given by C is £900,000. The net amount of consideration given by B is £100,000 (that is, the £1m given to A less the £900,000 received from C). So the total of the net amounts of consideration is £1m.
- The result is that the consideration for C's acquisition is £1m – the greatest amount out of £900,000, £1m and £1m.

Example 3 Series of assignments

Ex 3.1 This example covers a number of slightly different scenarios involving a series of assignments. In the first scenario, the final transferee pays an additional amount of consideration.

Ex 3.1.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1m. B pays A a deposit of £100,000.

Ex 3.1.2 B assigns its rights to C for £100,000 and C assigns its rights to D for £150,000.

Ex 3.1.3 D pays A £900,000 on completion.

- Ex 3.1.4 Similarly to C in Example 1, D is chargeable under paragraph 4 as the transferee. The chargeable consideration is £900,000 plus £150,000 totalling £1,050,000.
- Ex 3.1.5 Paragraph 5 applies in the following way. The acquisition by D is “the transferee’s land transaction” (paragraph 5(1)(a)). The assignment from C to D is “the implemented assignment of rights” (paragraph 5(2)). B is the purchaser under a notional land transaction (paragraph 5(1)). C is the purchaser under an additional land transaction (paragraph 5(2)).
- Ex 3.1.6 The chargeable consideration for B’s transaction – the notional land transaction – is given by paragraph 5(3). It is the £100,000 paid by B to A (amount “B” in paragraph 5(5)) plus the £900,000 paid by D to A on completion (amount “A” in paragraph 5(5)(b)) totalling £1m. B can claim relief.
- Ex 3.1.7 The chargeable consideration for C’s transaction – an additional land transaction – is given by paragraph 5(4). It is the £100,000 paid by C to B (amount “C” in paragraph 5(5) – in calculating amount C, “the preceding assignment of rights” was the assignment from B to C (paragraph 5(6)) plus the £900,000 paid by D to A on completion (amount “A” in paragraph 5(5)(b)) totalling £1m. C can claim relief.
- Ex 3.2 In the second scenario, D pays less.
- Ex 3.2.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1m. B pays A a deposit of £100,000.
- Ex 3.2.2 B assigns its rights to C for £100,000 and C assigns its rights to D for £50,000.
- Ex 3.2.3 D pays A £900,000 on completion.
- Ex 3.2.4 D is chargeable under paragraph 4 as the transferee. The chargeable consideration is £900,000 plus £50,000 totalling £950,000.
- Ex 3.2.5 The position of B and C is the same as in the previous scenario.

- Ex 3.3 In the final scenario, a series of assignments where D is connected with C. In this example, C gets a good deal from B in an entirely commercial transaction.
- Ex 3.3.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1m. B pays A a deposit of £100,000.
- Ex 3.3.2 B assigns its rights to C for £50,000 and C assigns its rights to D for nil. C and D are connected.
- Ex 3.3.3 D pays A £900,000 on completion.
- Ex 3.3.4 D is chargeable under paragraph 4 as the transferee. The chargeable consideration is £900,000 plus nil totalling £900,000. But the minimum consideration rule applies (paragraph 12(2)). Both the first and second minimum amounts are £950,000 (see below) so D is chargeable on £950,000.
- Ex 3.3.5 The position of B and C is the similar to the earlier examples.
- Ex 3.3.6 The first minimum amount is given by paragraph 13(2). C is “T” (“Condition B” in paragraph 13(3)) and “the first T” (paragraph 13(2)). So paragraph 13(2) picks up only the £50,000 paid by C to B plus the £900,00 payable on completion, and not the full £1m under the contract between A and B.
- Ex 3.3.7 The second minimum amount is given by paragraph 14. The relevant parties are C and D, not B (paragraph 14(4)). The net amount of consideration given by D is £900,000 and the net amount of consideration given by C is £50,000 (paragraph 14(2)). So the second minimum amount is £950,000.

Example 4 Series of subsales

- Ex 4.1 This is an example of a series of subsales.
- Ex 4.2 A enters into a sale and purchase agreement with B for some land with a consideration of £1m. B pays A a deposit of £100,000.
- Ex 4.3 B enters into a subsale agreement with C for £1m, with C paying a deposit of £100,000.
- Ex 4.4 C enters into a subsale agreement with D for £1.1m, with D paying deposit of £200,000 to C.

Ex 4.5 The contracts are completed together. On completion, D pays C £900,000, C pays B £900,000, and B pays A £900,000.

Ex 4.6 B and C chargeable on £1m according to the normal rules in section 44. They can claim relief. D is chargeable on £1.1m (see Ex 2.7 above).

Example 5 Exchanges – assignments

Ex 5.1 A enters into a sale and purchase agreement with B for Plot 1 with a consideration of £1m which reflects the market value of Plot 1. B pays A a deposit of £500,000.

Ex 5.2 B assigns its interest under the contract to C in return for consideration of Plot 2 from C. Plot 2 is worth £400,000. This is acceptable to B because the site of Plot 2 is commercially beneficial to B.

Ex 5.3 On completion, C pays A £500,000 for Plot 1.

Ex 5.4 C has entered into one transaction as purchaser (the acquisition of Plot 1 by C) in consideration of entering into another transaction as vendor in another (the acquisition of Plot 2 by B). Section 47 and paragraph 5 of Schedule 4 apply.

Ex 5.5 B is chargeable on a notional land transaction under paragraph 5 for which relief can be claimed. The chargeable consideration is £1m.

Ex 5.6 B is chargeable on the acquisition of Plot 1 from C. The chargeable consideration is determined by paragraph 5 of Schedule 4. This is the greater of the market value of Plot 2 (£400,000) and the amount B gave for it, that is, the value in money's worth of the right to complete on Plot 1 for £500,000 (£500,000). The larger amount is £500,000.

Ex 5.7 C is chargeable on the acquisition of Plot 1. The chargeable consideration is given by paragraph 5 of Schedule 4. The market value of Plot 1 is £1m. The consideration given by paragraph 1 of Schedule 4, read according to paragraph 5 of Schedule 2A, would give chargeable consideration of £900,000. So the chargeable consideration would be the larger amount of £1m.

Example 6 Exchanges – subsales

- Ex 6.1 A enters into a sale and purchase agreement with B for Plot 1 with a consideration of £1m which reflects the market value of Plot 1. B pays A a deposit of £500,000.
- Ex 6.2 B enters into a subsale agreement for Plot 1 with C, for consideration of £500,000 cash plus Plot 2. Plot 2 has a market value of £400,000. This is acceptable to B because the site of Plot 2 is commercially beneficial to B. The agreements are completed at the same time and in connection with each other.
- Ex 6.3 C has entered into one transaction as purchaser (the acquisition of Plot 1 by C) in consideration of entering into another transaction as vendor in another (the acquisition of Plot 2 by B). Section 47 and paragraph 5 of Schedule 4 apply.
- Ex 6.4 B is chargeable on the acquisition of Plot 1 from A but can claim relief.
- Ex 6.5 B is also chargeable on the acquisition of Plot 2 from C. The chargeable consideration is determined by paragraph 5 of Schedule 4. This is the greater of the market value of Plot 2 (£400,000) and the amount B gave for it, that is, the value in money's worth of Plot 1 apportioned on a just and reasonable basis between the cash consideration received by B and Plot 2 (£500,000). The larger amount is £500,000.
- Ex 6.6 C is chargeable on the acquisition of Plot 1. The chargeable consideration is given by paragraph 5 of Schedule 4. The market value of Plot 1 is £1m. The consideration given by paragraph 1 of Schedule 4, read according to paragraph 9 of Schedule 2A, would give chargeable consideration of £900,000. So the chargeable consideration would be the larger amount of £1m.

Example 7 Acquisition by connected company

- Ex 7.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1m which reflects the market value of the land. Completion is set for two years after the agreement is entered into.

- Ex 7.2 After one year, the market value of the land has increased to £1.1m. B enters into a subsale agreement with C for consideration of £900,000. C is a company connected with B. Both agreements are completed at the same time and in connection with each other.
- Ex 7.3 B is chargeable on its acquisition of the land and can claim relief.
- Ex 7.4 C is chargeable on its acquisition of the land. In the first instance, the chargeable consideration given by paragraph 9 (as it applies to paragraph 1 of Schedule 4) is £900,000.
- Ex 7.5 The deemed market value rule in section 53 does not apply because the vendor for C's acquisition is A (paragraph 10(3)). So the chargeable consideration is not increased to £1.1m
- Ex 7.6 However, B and C are connected so the minimum consideration rule applies to increase the chargeable consideration for C's acquisition to £1m.

Example 8 Partnerships

- Ex 8.1 A enters into a sale and purchase agreement with B for some land with a consideration of £1m which reflects the market value of the land.
- Ex 8.2 B enters into a subsale agreement with C for consideration of £1m. C is a partnership in which B has a 90% partnership share. The two agreements complete at the same time and in connection with each other.
- Ex 8.3 B is chargeable on its acquisition of the land and can claim relief.
- Ex 8.4 C is chargeable on its acquisition of the land. The chargeable consideration given by paragraph 9 (as it applies to paragraph 1 of Schedule 4) is £1m. C does not get the benefit of the rules for special partnership transactions in Part 3 of Schedule 15 because the vendor for C's acquisition is A (paragraph 10(3)).

Example 9 Novation

- Ex 9.1 This is an example of how the rules apply to a novation.

- Ex 9.2 A enters into a sale and purchase agreement with B for some land with a consideration of £1m payable on completion.
- Ex 9.3 A, B and C enter into a deed of novation under which: C replaces B as the purchaser of the land; and C pays B £100,000 in consideration for B relinquishing its rights under the first contract.
- Ex 9.4 C completes the new contract to acquire the land from A and pays A £1m.
- Ex 9.5 The novation is a pre-completion transfer (paragraph 1(1)-(2) and (5)). It is a free-standing transfer (paragraph 2(2)). C is not regarded as entering into a land transaction by reason of the novation (paragraph 3).
- Ex 9.6 On completion, C is the purchaser under a land transaction as per section 44(3). The chargeable consideration under paragraph 9(2) is £1.1m.
- Ex 9.7 B is not the purchaser under a land transaction.