



Stamp duty land tax: charities relief

Who is likely to be affected?

Charities which purchase interests in UK land jointly, as tenants in common, with persons who do not have charitable status (non-charity purchasers).

General description of the measure

The measure will make it clear that partial relief from stamp duty land tax (SDLT) is available where a charity purchases land jointly, as tenants in common, with a non-charity purchaser. Broadly, relief from SDLT will be available on the charity's share of the purchase, provided that the other conditions for the relief are met.

Policy objective

This measure provides for partial charities relief to be available in line with the judgment of the Court of Appeal in the cases of *The Pollen Estate Trustee Company Limited and Kings College London v HM Revenue & Customs (HMRC)*, whilst also ensuring that the availability of partial relief cannot be exploited for avoidance purposes.

Background to the measure

The changes are being made in response to the Court of Appeal judgment. The Court ruled that, where a charity purchases an interest in land jointly with a non-charity purchaser, the charity can claim relief on its share of the land.

Detailed proposal

Operative date

These changes will have effect for transactions with an effective date on or after the date that Finance Bill 2014 receives Royal Assent.

Current law

Schedule 8 to the Finance Act 2003 provides for relief from SDLT for purchases by charities provided that:

- the purchaser (the charity) intends to hold the interest in land for qualifying charitable purposes; and
- the transaction has not been entered into for the purpose of avoiding SDLT.

Qualifying charitable purposes are defined as:

- for use in the furtherance of the charitable purposes of the charity or another charity, or
- as an investment from which the profits are applied to the charitable purposes of the purchaser.

Schedule 8 also provides for:

- relief where the first condition above is not met but the purchaser intends to hold the greater part of the property for qualifying charitable purposes; and
- withdrawal of the relief if, within three years of purchase, the purchaser ceases to be a charity or the property is used or held by the purchaser for non-qualifying purposes.

Proposed revision

These changes are being made in response to the Court of Appeal judgement which ruled that, where a charity purchases an interest in land jointly with a non-charity purchaser, the charity can claim relief on its share of the land.

Legislation will be introduced in Finance Bill 2014 to amend Schedule 8 to clarify how partial relief will apply. The changes will provide that:

- where a charity purchases an interest in land jointly, as tenants in common (or, in Scotland, as owners in common), with a non-charity purchaser, relief will be available to the extent that the purchaser is a charity, provided that the charity intends to hold its share of the land for qualifying charitable purposes;
- the amount of relief available will be based on the lower of the proportion of the total chargeable consideration paid by the charity, or any person connected with them, or the proportion of the chargeable interest held by the charity; and
- SDLT, in respect of the non-charity purchasers share in the land, will be chargeable at the rate applicable to the total consideration paid for the property, by both the charity and non-charity purchaser or any persons connected with them.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
	-	negligible	negligible	negligible	negligible	negligible
	This measure is expected to have a negligible impact on the Exchequer.					
Economic impact	The measure is not expected to have any significant economic impact.					
Impact on individuals and households	There is no impact on individuals because the measure will only affect charities.					
Equalities impacts	No different impacts on any protected groups have been identified.					
Impact on business including civil society organisations	<p>This measure is expected to have a negligible impact on businesses and civil society organisations.</p> <p>This change will benefit charities that purchase interests in land jointly, as tenants in common, with non-charity purchasers. The charity will be able to claim relief on its share of the land. It is estimated that fewer than 100 charities per year will be affected by this change. The cost to charities of complying with this change is expected to be negligible.</p>					
Operational impact (£m) (HMRC or other)	The additional costs for HMRC in implementing this change are expected to be negligible.					
Other impacts	Other impacts have been considered and none have been identified.					

Monitoring and evaluation

This measure will be monitored through information collected from SDLT returns and the SDLT compliance programme.

Further advice

If you have any questions about this change, please contact Jane Ewart on 03000 585790 (email: jane.ewart1@hmrc.gsi.gov.uk).

1 Stamp duty land tax: charities relief

Schedule 1 amends Schedule 8 to FA 2003 (stamp duty land tax: charities relief).

SCHEDULES

SCHEDULE 1

Section 1

STAMP DUTY LAND TAX: CHARITIES RELIEF

- 1 Schedule 8 to FA 2003 (stamp duty land tax: charities relief) is amended as follows.
- 2 In paragraph 1 –
 - (a) in sub-paragraph (2) (first condition for charities relief), omit the words from “that is” to the end;
 - (b) after sub-paragraph (3) insert –
 - “(3A) For the purposes of this Schedule, a charity (“C”) holds a chargeable interest for qualifying charitable purposes if it holds it –
 - (a) for use in furtherance of the charitable purposes of C or another charity, or
 - (b) as an investment from which the profits are applied to the charitable purposes of C.”
- 3 After paragraph 3 insert –

“Joint purchasers: partial relief

 - 3A (1) Sub-paragraphs (3) to (5) apply in any case where –
 - (a) there are two or more purchasers under a land transaction,
 - (b) the purchasers acquire the subject-matter of the transaction as tenants in common (or, in Scotland, as owners in common),
 - (c) at least one of them is, and at least one of them is not, a qualifying charity, and
 - (d) no purchaser enters into the transaction for the purpose of the avoidance of tax under this Part (whether by that purchaser or another person).
 - (2) A charity (“C”) that is a purchaser under a land transaction is a “qualifying charity” in relation to the transaction if C intends to hold its undivided share of the subject-matter of the transaction for qualifying charitable purposes.
 - (3) The tax chargeable in respect of the transaction is reduced by the amount of the relief under sub-paragraph (4).
 - (4) The relief is equal to the relevant proportion of the tax that would have been chargeable in respect of the transaction without this Schedule.

- (5) The “relevant proportion”, in the case of a qualifying charity, is the lower of P1 and P2, where –
- P1 is the proportion of the subject-matter of the transaction that is acquired by the qualifying charities (or the qualifying charity if there is just one) under the transaction;
- P2 is the proportion of the chargeable consideration for the transaction that is given by the qualifying charities (or the qualifying charity).

Withdrawal of relief given under paragraph 3A

- 3B (1) This paragraph applies where –
- (a) relief has been given under paragraph 3A in respect of a transaction (“the relevant transaction”),
 - (b) a disqualifying event occurs in relation to a qualifying charity (“C”) which was a purchaser under the transaction, and
 - (c) the disqualifying event occurs in the circumstances required by sub-paragraphs (2) and (3).
- (2) The disqualifying event must occur –
- (a) before the end of the period of 3 years beginning with the effective date of the transaction, or
 - (b) in pursuance of, or in connection with, arrangements made before the end of that period.
- (3) At the time of the disqualifying event C must hold a chargeable interest that –
- (a) was acquired by C under the relevant transaction, or
 - (b) is derived from an interest so acquired.
- (4) There is a “disqualifying event” in relation to C if –
- (a) C ceases to be established for charitable purposes only, or
 - (b) the chargeable interest acquired by C under the transaction, or any interest or right derived from that interest, is used or held by C otherwise than for qualifying charitable purposes.
- (5) C’s portion of the relief mentioned in sub-paragraph (1)(a), or an appropriate proportion of C’s portion of that relief, is withdrawn and tax is chargeable in accordance with this paragraph.
- (6) The amount chargeable is equal to C’s portion of the relief or, as the case may be, the appropriate proportion of C’s portion of the relief.
- (7) C’s portion of the relief depends on whether P1 or P2 was lower in the calculation under paragraph 3A(5).
- (8) If P1 was lower, C’s portion of the relief is equal to –

$$\frac{p1}{P1} \times R$$

where –

p1 is the proportion of the subject-matter of the transaction that was acquired by C under the transaction;

P1 is the proportion of the subject-matter of the transaction that was acquired by all the qualifying charities that were purchasers under the transaction (in aggregate);

R is the amount of the relief.

- (9) If P2 was lower, C’s portion of the relief is equal to –

$$\frac{p2}{P2} \times R$$

where –

p2 is the proportion of chargeable consideration for the transaction that was given by C;

P2 is the proportion of the chargeable consideration for the transaction that was given by all the qualifying charities that were purchasers under the transaction (in aggregate);

R is the amount of the relief.

- (10) In sub-paragraphs (5) and (6) “appropriate proportion” means an appropriate proportion having regard to –
- (a) what was acquired by C under the relevant transaction and what is held by C at the time of the disqualifying event, and
 - (b) the extent to which what is held by C at that time becomes used or held for purposes other than qualifying charitable purposes.

Partial relief: charity not fully meeting the “qualifying charity” condition

- 3C (1) This paragraph applies where –

- (a) a charity (“C”) is one of two or more purchasers acquiring the subject-matter of a land transaction (“the relevant transaction”) as tenants in common (or, in Scotland, as owners in common),
- (b) C is not a qualifying charity in relation to the transaction,
- (c) paragraph 3A(3) to (5) would apply if C were a qualifying charity, and
- (d) C intends to hold the greater part of its undivided share of the subject-matter of the transaction for qualifying charitable purposes.

- (2) In such a case –

- (a) paragraph 3A has effect as if C were a qualifying charity, but
- (b) for the purposes of paragraph 3B (withdrawal of relief under paragraph 3A) “disqualifying event” includes any additional disqualifying transaction.

- (3) The following are “additional disqualifying transactions” if they are not made in furtherance of the charitable purposes of C –
 - (a) any transfer by C of a major interest in the whole or any part of the chargeable interest acquired by C under the relevant transaction;
 - (b) any grant by C at a premium of a low-rental lease of the whole or any part of that chargeable interest.
 - (4) Paragraph 3(3) (meaning of “at a premium” and “low-rental”) applies for the purposes of sub-paragraph (3)(b) as it applies for the purposes of paragraph 3(2)(b)(ii).
 - (5) In relation to a transaction that, by virtue of this paragraph, is a disqualifying event for the purposes of paragraph 3B –
 - (a) the date of the event for those purposes is the effective date of the transaction;
 - (b) paragraph 3B has effect with the modifications in sub-paragraph (6).
 - (6) The modifications to paragraph 3B are –
 - (a) in sub-paragraph (3), for “At the time of” substitute “Immediately before”;
 - (b) in sub-paragraph (10)(a), for “at the time of” substitute “immediately before and immediately after”;
 - (c) omit sub-paragraph (10)(b).”
- 4 In paragraph 4(3) (charitable trusts) –
 - (a) in paragraph (a), for the words from “references” to “are to” substitute “references in paragraph 1(3A) to the charitable purposes of C are to those of”;
 - (b) in paragraph (b), for “reference” substitute “references” and for “is” substitute “, and to C in paragraph 3B(4)(a), are”;
 - (c) in paragraph (c) for the words from “reference” to “is” substitute “references in paragraphs 3(2)(b) and 3C(3) to the charitable purposes of C are”.
- 5 The amendments made by this section have effect in relation to any transaction of which the effective date (within the meaning of Part 4 of FA 2003) is on or after the day on which this Act is passed.

EXPLANATORY NOTE

STAMP DUTY LAND TAX: CHARITIES RELIEF

SUMMARY

1. Clause [X] and Schedule [Y] introduce amendments to Schedule 8 of the Finance Act 2003 (FA2003) to make it clear that partial relief is available where a charity purchases land jointly, as tenants in common, with a person who does not have charitable status.

DETAILS OF THE SCHEDULE

2. Paragraph 2 inserts new sub-paragraph (3A) into paragraph 1 of Schedule 8, which defines “qualifying charitable purposes” for the purposes of the schedule as being:

- a. for use in furtherance of the charitable purposes of the charity or another charity;
or
- b. as an investment the profits of which are applied to the charitable purposes of the charity.

3. Paragraph 3 inserts new paragraphs 3A, 3B and 3C into Schedule 8.

4. New paragraph 3A provides for partial relief for joint purchasers.

5. Sub-paragraph 1 provides that sub-paragraphs 3 to 5 apply where –

- a. there are two or more purchasers under a land transaction;
- b. the purchasers acquire the land as tenants in common (or, in Scotland, owners in common);
- c. at least one of the purchasers is a qualifying charity and at least one is not; and
- d. the transaction is not being entered into for the avoidance of SDLT, by any of the purchasers or any other person.

6. Sub-paragraph 2 defines a “qualifying charity” as a charity which intends to hold its share in the property for qualifying charitable purposes.

7. Sub-paragraph 3 provides for partial relief to be available by reducing the SDLT due on the transaction by the amount of relief provided for under sub-paragraph (4).

8. Sub-paragraph 4 provides that the relief available is equal to the “relevant proportion” of the tax that would otherwise have been chargeable on the transaction.

9. Sub-paragraph 5 defines the relevant proportion as the lower of:

- a. the proportion of the land that is acquired by the qualifying charity or charities;
and
 - b. the proportion of the chargeable consideration for the transaction that is given by the charity or charities.
10. New paragraph 3B provides for withdrawal of the relief given under paragraph 3A.
11. Sub-paragraph 1 provides that paragraph 3B applies where relief has been given under paragraph 3A and a disqualifying event occurs.
12. Sub-paragraph 2 defines a “disqualifying event” as:
- a. the charity ceasing to be established for charitable purposes, or
 - b. the share in the property held by the charity, or any interest derived from it, being used or held by the charity for non-charitable purposes.
13. Sub-paragraph 3 provides that a disqualifying event must occur before the end of three years from the effective date of the transaction or in pursuance of, or in connection with, arrangements that were made before the end of that three year period.
14. Sub-paragraph 4 provides that, at the time of the disqualifying event, the charity must hold a chargeable interest in, or an interest derived from, the land that was acquired under the original transaction.
15. Sub-paragraph 5 provides that the relief under paragraph 3A, or an appropriate proportion of it, is withdrawn, and tax becomes chargeable.
16. Sub-paragraph 6 provides that the amount of tax chargeable, in respect of a charity, is the amount of relief given under paragraph 3A, or an appropriate portion of that relief.
17. Sub-paragraph 7 provides that the amount of tax chargeable is dependant on whether the relief given under paragraph 3A(5) was based on P1 or P2.
18. Sub-paragraph 8 sets out how to calculate the charity’s proportion of the relief, where more than one qualifying charity is a purchaser, and the relief given was based on P1 (the proportion of the land acquired by the charities). This is:

$$\frac{p1}{P1} \times R$$

where –

p1 is the proportion of the land that was acquired by the charity;
P1 is the total proportion of the land acquired by all the qualifying charities; and
R is the amount of the relief.

19. Sub-paragraph 9 sets out how to calculate the charity's proportion of the relief, where more than one qualifying charity is a purchaser, and the relief given was based on P2 (the proportion of the chargeable consideration given by the charities). This is:

$$\frac{p2}{P2} \times R$$

where –

p2 is the proportion of the chargeable consideration given by the charity;

P2 is the total proportion of the land acquired by all the qualifying charities; and

R is the amount of the relief.

20. Sub-paragraph 10 provides that in determining the appropriate proportions, as referred to in sub-paragraphs (5) and (6), account must be taken of –

- a. what the charity acquired and what it held at the time of the disqualifying event; and
- b. the extent to which what is held by the charity at the time of the disqualifying event is used or held for non-charitable purposes.

21. New paragraph 3C allows for relief to be available where the charity does not fully meet the “qualifying charity” condition.

22. Sub-paragraph 1 provides that paragraph 3C applies where –

- a. a charity is acquiring land jointly as tenants in common (or, in Scotland, owners in common) with a non-charity purchaser;
- b. the charity does not meet the qualifying charity condition in relation to the land,
- c. partial relief would apply if that condition were met, and
- d. the charity intends to hold the greater part of its share in the property for qualifying charitable purposes.

23. Sub-paragraph 2 provides that in such a case paragraph 3A applies but that, for the purposes of withdrawal of the relief under paragraph 3B, “additional disqualifying events” apply.

24. Sub-paragraph 3 defines “additional disqualifying transactions” as –

- a. any transfer by the charity of a major interest in the whole or any part of its share in the property; and
- b. any grant by the charity at a premium of a low-rental lease if the whole or any part of its share in the property.

25. Sub-paragraph 4 imports the definitions of “at a premium” and “low-rental” from paragraph 3(3).

26. Sub-paragraph 5 provides that for the purposes of paragraph 3B the date of the disqualifying event is the effective date of the transaction.

27. Sub-paragraph 6 sets out some modifications that apply to paragraph 3B in its application to an additional disqualifying event.
28. Paragraph 4 makes consequential amendments to paragraph 4 of Schedule 8.
29. Paragraph 5 provides that the amendments made by paragraphs 1 to 4 will have effect for transactions with an effective date on or after the date on which Finance Bill 2014 receives Royal Assent.

BACKGROUND NOTE

30. These changes are being made as a result of the Court of Appeal judgement in the cases of *The Trustees of the Pollen Estate Company Limited and Kings College London v HM Revenue and Customs*. The Court ruled that, where a charity purchased property jointly, as tenants in common, with a non-charity purchaser, relief from SDLT is available on the charity's share of the property.

31. Amending the legislation to provide for partial relief will provide clarity for taxpayers on how partial relief will apply. In addition, to ensure that the availability of partial relief cannot be exploited to avoid SDLT, the SDLT relief that the charity can claim will be restricted to the lower of:

- the percentage share which the charity holds in the property; and
- the percentage of the purchase price paid by the charity for its share in the property.

32. If you have any questions about these changes, or comments on the legislation, please contact Jane Ewart on 03000 585790 (email: jane.ewart1@hmrc.gsi.gov.uk).