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HM Revenue & Customs
BAI Stamp Taxes

Via email:

Dear

Stamp Duty Land Tax – Acquisition by house-building company from individual acquiring new dwelling (Finance Act 2003 section 58A and Schedule 6A)

Thank you for your response of 7 May 2020 to Brian Slater's letter. I have recently become Chair of the CIOT Property Taxes Committee.

We note HMRC's view that relief would be available where the members of the LLP, or partners are all house building companies as a result of the 'look through' provisions in FA 2003 Schedule 15 paragraph 2. Following that helpful confirmation (and as referenced in our earlier letter of 8 October) we would be grateful therefore for HMRC's view on the associated question of whether partial relief would be available where the members of the LLP or the partners in a partnership consist of qualifying and non-qualifying house building companies following the Court of Appeal decision in *Pollen Estate Trustee Co Ltd v HMRC*?¹

The logic of the Court of Appeal's decision in *Pollen Estate* invites the argument that partial relief should be available to the qualifying house building member or partner where members of the LLP or the partners in a partnership consist of qualifying and non-qualifying house building companies. In particular,

1. the Court of Appeal confirms that joint purchasers will together acquire the entire undivided equitable estate of the property as a single land transaction.
2. There is no 'conceptual uncertainty'² or 'insuperable practical administrative problems'³ in applying relief to that proportion of the beneficial interest attributable to the undivided share held by the qualifying house building member or partner.

¹ [2013] EWCA Civ 753

² Para 49 Mcfarlane LJ *Pollen Estate*

³ Para 49 Mcfarlane LJ *Pollen Estate*

3. There does not appear to be any policy reason why partial relief is not available. As we noted in our earlier letter, the policy intent of the relief is to facilitate liquidity in the housing market and assist with mobility of labour. House builders are often constituted as LLPs rather than as companies as part of joint venture arrangements between commercial developers and, for example, a local authority, a financial institution or a housing association, to facilitate residential development. Part exchange schemes for buyers of residential homes are routinely operated by the larger house builders.

We look forward to your response.

Yours sincerely

Marc Selby

Chair, Property Taxes Committee

The Chartered Institute of Taxation

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