

Ref: PT/STPG

23 November 2023

Via email: [REDACTED]

Cc: [REDACTED]

Dear [REDACTED]

The Stamp Taxes Practitioners Group (STPG) is the leading professional forum for stamp taxes practitioners consisting of 209 members. Members are drawn from the legal, accountancy and surveying professions and include practitioners in the fields of tax, real estate and conveyancing.

The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

SDLT relief for special tax sites – FA 2003 Schedule 6C

Thank you for your response of 11 July to the question raised at the SDLT Working Together meeting concerning the availability of SDLT relief under FA 2003 Schedule 6C where a purchaser enters into a forward funding arrangement to develop the site.

We suggest that entering into a forward funding arrangement should be distinguished from land banking in both policy terms and under a purposive interpretation of para 3(2)(d).

Paragraph 3(2)(d) treats land as non-qualifying if held for resale without development. Under the forward funding contractual matrix the development of the site is integral to the sale to the investor. In that sense there is no sale 'without development' as envisaged by paragraph 3(2)(d). The SDLT relief is forward-looking and based on use after the effective date as well as the intention at the effective date, subject to the withdrawal provisions. There are no limiting words in para 3(2)(d) to require that development is tested at the time of sale.

From a policy perspective we are concerned that it is potentially economically distortive to deny SDLT relief for forward funding development finance as compared to a more traditional form where the developer uses their own funds or borrows directly to carry out the development. To do so may have the unintended consequence of deterring investment and therefore undermine the overall policy aim of promoting long-term investment in underdeveloped tax sites.

We explore these points in more detail below.

Forward funding agreements

Background

Forward funding development finance is an alternative structure to a more traditional form of financing where the developer uses their own funds or borrows directly to carry out the development. We understand that this structure is commonly used in commercial property development. A developer will bear development risk (and benefit from development profit) by undertaking the activities outlined. Having assembled a successful development project, the developer will then (by means of forward funding structure) sell the development to an investor (such as a pension fund) which cannot accept development risk but which looks to benefit from long term rental income from the completed development. The developer commits to procuring construction of the development, and the investor funds development expenditure as it is incurred. The investor will not normally acquire the site unless the developer has also entered into the development agreement, so the transfer of the site to the investor is likely to be conditional on the development agreement being entered into. Often the site will be subject to an agreement for lease with a prospective tenant who will also want the developer to complete the development. For direct tax purposes, typically the development will be taxed as one development trade (including any profit on the sale of the land to the investor) reflecting the position that the sale is integral to the development.

Forward funding is also tax efficient from the perspective of the investor as the investor only pays SDLT on the price for the bare land at the time when it acquires the land before construction work is undertaken, as opposed to the full developed value of the land with the benefit of a lease(s) having been granted. It is well-established that the decision in *Prudential Assurance Co Ltd v IRC* applies for the purposes of SDLT¹.

Development may be undertaken through a propco/opco structure whereby propco holds the land and the development is carried out by a connected company (opco). The carrying out of the development by a connected party is envisaged in Schedule 6C para 3(1)(b). If development finance is provided via a forward funding arrangement the transaction land is sold by propco to the investor and developed by opco under the agreement with the investor.

HMRC's position

The response indicates that where a developer buys land in a designated site, promotes planning applications, secures a tenant(s), enters into an agreement for lease and sells the land to the funder, HMRC consider that the land is held as stock by the developer without any development before transfer to the funder. Therefore HMRC's view is that the land is held in a non-qualifying manner by virtue of paragraph 3(2)(d). In HMRC's view promoting planning applications and entering into an agreement for lease with a tenant prior to transfer to the funder does not amount to development for this purpose. HMRC consider the decision in *Ladson Preston Ltd and AKA Developments Greenview Ltd v HMRC*² supports that view.

That case was concerned with the question of what was sufficient to constitute a dwelling that is 'in the process of being constructed' (our underlining) for multiple dwellings relief under schedule 6B paragraph 7(2)(b). It was held that

¹ [SDLTM04015](#)

² [Ladson Preston Ltd and AKA Developments Greenview Ltd v HMRC \[2022\] UKUT 00301 \(TCC\)](#)

some physical manifestation on the land is required before it can be said that there is a building in the process of being constructed for use as a single dwelling (paragraph 44 of the decision). The grant of planning permission is not sufficient in itself. The broader question of when development is treated as commencing was not regarded as relevant to the correct statutory interpretation of the specific provision (see paragraph 45). The decision does not therefore appear to us to assist the question of whether land is held for resale without development in the context of Schedule 6C paragraph 3.

We note that some physical works may be completed before sale to an investor under a forward funding arrangement (see for example the facts in *Prudential*). In those circumstances would HMRC accept that the land would be used in a qualifying manner?

Distinguishing land banking

We note your comments that paragraph 3(2)(d) is intended to prevent a purchaser from claiming the relief where no development takes place, instead the land is retained (with planning permission) as a deliberate strategy for managing pipelines ('land banking'). In the case of forward funding the land is sold to the investor often before physical construction commences, however the sale is only made to the investor where the seller company/group agrees to develop the property for the investor.

The use of this funding structure is therefore distinguishable from the acquisition of a site that is deliberately left unused or put to some temporary use pending future development at an unspecified time subject to market conditions or other reasons. In fact, forward funding is a mechanism that allows the development to proceed in circumstances where it would not otherwise be viable using traditional funding. In that sense it is the opposite of land banking.

Where the land is not developed within the control period of three years because funding is not available, whether through traditional form or forward funding, the clawback provisions in paragraph 8 operate to withdraw the relief.

We would be pleased to discuss this issue further in a meeting drawing on industry experience if that might be helpful.

Yours sincerely

██████████ for the Stamp Taxes Practitioners Group

██████████ Chair CIOT Property Taxes Committee

The Chartered Institute of Taxation

The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.