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Ref: PT

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[REDACTED]
Head of Policy, Stamp Taxes and ATED

Via email: [REDACTED]

Dear [REDACTED]

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

We write in connection with the SDLT reliefs for an acquisition of an existing house by a house builder where the individual acquires a new house from the house builder in part exchange. The question at issue is whether the relief applies where the house builder is a limited liability partnership (LLP).

As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT 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 which 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.

Policy intent

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.

The existing SDLT reliefs

Finance Act 2003 Schedule 6A paragraph 1 exempts from charge a 'house-building company' on the acquisition of an existing house in exchange for a new house, subject to the conditions as defined in FA 2003 Schedule 6A paragraph 1. A 'house-building company' is defined as 'a company that carries on the business of constructing or adapting buildings or parts of buildings for use as dwellings' (paragraph 1(4)).

Finance Act 2003 Schedule 6A paragraph 2 exempts from charge the acquisition by a property trader whose business consists of or includes acquiring dwellings from individuals who are buying a new home from a house building company. A 'property trader' is defined in Schedule 6A paragraph 8 as a company, an LLP or a partnership whose members are all companies or LLPs. A 'house-building company' is defined as for paragraph 1(4).

Under section 1(2) of the Limited Liability Partnerships Act 2000, an LLP is a body corporate. HMRC has indicated that an LLP is a 'body corporate' for the purposes of SDLT group relief (see SDLTM34360¹).

Section 100(1) of FA 2003 defines 'a company', except as otherwise expressly provided, as any body corporate or unincorporated association, but does not include a partnership.

FA 2003 Schedule 15 Part 1

Part 1 of Schedule 15 of FA 2003 sets out the general statutory provisions applicable to partnerships. Paragraph 2(1) provides that the legal personality of a partnership including an LLP is disregarded and a land transaction entered into for the purposes of a partnership is treated as entered into by or on behalf of the partners. Paragraph 2 therefore disregards the legal personality of a partnership. There is no express provision in Part 1 that overrides section 100.

SDLTM33120 indicates that the disregard of the legal personality of a partnership applies 'for the purposes of SDLT'.

The issue

The issue is a lack of certainty in respect of HMRC's view of the availability of the reliefs for a house builder LLP operating a qualifying part exchange scheme. SDLT commentators reflect uncertainty on this point. The parts of the SDLT manual dealing with the Schedule 6A reliefs (at SDLTM21010, 21020 and 21030) do not directly address the issue.

Therefore, we write to request that HMRC confirm their view of the application of the relief, specifically

- whether an LLP qualifies for the relief as 'a house-building company' within Schedule 6A paragraphs 1 by virtue of its status as a body corporate;
- whether relief would be available where the members of the LLP or the partners in a partnership are all house building companies (within paragraph 1(4)) as a result of the 'look through' provisions in Schedule 15 Part 1;

¹ <https://www.gov.uk/hmrc-internal-manuals/stamp-duty-land-tax-manual/sdltm34360>

If the Schedule 15 Part 1 look through provisions are in point, a potential further area of uncertainty is 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 in respect of the qualifying member(s) following the CA decision in *Pollen Estate Trustee Co Ltd v HMRC*.²

We note that the equivalent to Schedule 6A paragraph 1 relief for Land Transaction Tax (LTT) in Wales is specifically stated to be available to an LLP. For LTT a 'housebuilder' is defined as a company, a limited liability partnership, or a partnership whose members are all either companies or limited liability partnerships. (see LTTADT(W)A 2017 Schedule 14 para 2,9.) In Scotland the same relief from Land and Building Transaction Tax mirrors the SDLT relief (see Land and Buildings Transaction Tax (Scotland) Act 2013 Part 2 Schedule 4).

Yours sincerely

Brian Slater

Chair, Property Taxes Sub-committee

The Chartered Institute of Taxation

The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with 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. 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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

² [2013] EWCA Civ 753