

FINANCE ACT 2014

EXPLANATORY NOTES

INTRODUCTION

Section 113: Stamp Duty Land Tax: Charities Relief

Summary

1. This section and Schedule 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

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which received Royal Assent on 17 July 2014*

- 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:
- $$p1P1 \times R$$
- 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:
- $$p2P2 \times R$$
- 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

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- 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 of Royal Assent of Finance Act 2014.

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 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.