Stamp duty land tax house builder relief for part-exchanges

Indirect Tax **Large Corporate**

01 July 2020

HMRC responds to the CIOT's request for clarification of the way stamp duty land tax house builder relief operates for a limited liability par tnership.

Under Finance Act 2003 Sch 6A para 1, there is an exemption from stamp duty land tax (SDLT) where a 'house-building company' acquires an individual's existing house in exchange for the individual buying a new house from the house builder. The policy intent of the relief is to facilitate liquidity in the housing market and assist with mobility of labour. Part exchange schemes for buyers of residential homes are routinely operated by the larger house builders.

House builders are often constituted as limited liability partnerships (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.

As previously reported, there was a lack of certainty in respect of HMRC's view of the availability of the reliefs for an LLP house builder operating a qualifying part exchange scheme. Therefore, the CIOT has asked HMRC to clarify their view in two respects.

Does an LLP qualify for the relief as 'a house-building company' within FA 2003 Sch 6A para 1 by virtue of its status as a body corporate?

HMRC indicated that as a result of FA 2003 Sch 15 para 2, the legal status of a partnership is to be disregarded for SDLT purposes, so its body corporate status cannot be taken into consideration.

Would relief be available where the members of the LLP or the partners in a partnership are all house-building companies?

HMRC confirmed that relief would be available where the members of the LLP, or the partners in a partnership, are all house-building companies as a result of the 'look through' provisions contained in FA 2003 Sch 15 para 2.

A remaining area of uncertainty that was also raised in the CIOT's letter 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 following the Court of Appeal decision in *Pollen Estate Trustee Co Ltd v HMRC* [2013] EWCA Civ 753. We hope to clarify this point in further discussion.

The CIOT's letter to HMRC, and HMRC's response can be read in full here.

Kate Willis

kwillis@ciot.org.uk