LEGISLATION DAY: STAMP DUTY LAND TAX

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Introduction

Since 2010, it has become the norm for draft tax legislation to be published late in the calendar year for eventual inclusion in the following year's Finance Bill. This is published one week or two after the Chancellor's Autumn Statement, and the publication date has generally become known amongst tax practitioners as 'Legislation Day'. This year, Legislation Day was on 9 December.

We have divided our commentary on the draft legislation amongst seven subject areas: Income tax & NICs, Corporation tax, Inheritance tax, VAT, Stamp taxes, Pensions & Compliance, avoidance and evasion. Our commentary does not attempt to cover everything for which legislation was published. Instead, we have opted to cover about 25 significant topics on which there is now more detail available than on Autumn Statement day (25 November).

Draft legislation is always subject to amendment of course, both before and after it is introduced to the House of Commons.

See Simon's Taxes Binder 1 for information about recent New Developments which are to be incorporated into the commentary.

Stamp duty land tax

Two measures are included in the draft Finance Bill as follows.

The following new reliefs from the 15% SDLT charge on residential property acquired by non-natural persons will apply where the effective date of the transaction is on or after 1 April 2016. The charge will not apply to interests in dwellings which are:

- acquired for the purpose of making the dwelling available to an employee or partner for use as living accommodation solely or mainly for the purposes of a property rental business;
- one of at least three flats in the same premises and acquired by a tenants' management company for the purpose of making it available for use as caretaker accommodation;
- acquired by an authorised provider of home reversion plans (i.e. equity release schemes) for the purposes of such a plan;
- acquired exclusively for conversion of the building for non-residential use for the purposes of a trade or for demolition in preparation for use of the land for the purposes of a trade.

In each case, the charge will be reinstated if, within three years of the effective date of the transaction, the dwelling begins to be held for other purposes or, in the case of conversion or demolition, the building is used as a dwelling whilst still owned by the purchaser or the conversion or demolition work has not started. Similar reliefs will also be introduced for the purposes of the annual tax on enveloped dwellings.

The second measure introduces new SDLT reliefs for property authorised investment funds (PAIFs) and co-ownership authorised contractual schemes (COACSs). The changes will apply, broadly, where the effective date of the transaction is on or after the date of Royal Assent to the Finance Act 2016.

A COACS will no longer be transparent for SDLT purposes so that a change in ownership of the units will not result in an SDLT charge, but such a charge will generally arise when the scheme acquires a property. The operator of the scheme rather than the unit holders will be responsible for filing and payment.

Additionally a new 'seeding' relief will be introduced for both PAIFs and COACSs that meet a genuine diversity of ownership test. During an initial seeding period ending with the date of the first external investment or ending after 18 months if earlier, transfers of property into a fund or scheme will be exempt from SDLT if the only consideration for the transfer is the issue of units.

The fund or scheme must meet a 'portfolio test' at the end of the seeding period and throughout a further three-year control period. For non-residential property the portfolio test requires that the fund or scheme holds at least ten interests to which the relief applies and that the total chargeable consideration for all such interests is at least £100 million. For residential properties

the test is the same except that there must be at least 100 interests to which the relief applies. Mixed portfolios where no more than 10% of the total chargeable consideration relates to residential property are required only to meet the test for non-residential property; otherwise the test for residential property must be met.

The relief will be withdrawn where the fund or schemes cease to qualify as a PAIF or COACS, or a COACS ceases to meet the genuine diversity of ownership condition, before the end of the control period. Relief may also be withdrawn in respect of any property occupied as a dwelling by a connected individual or where units received in consideration for the initial seeding are disposed of before the end of the control period.