

Scaring the dickins out of taxmen

SDLT HMRC has lost the first case to deal with SDLT planning. *Shimon Shaw* analyses the ruling, arguing it could be used by parties to have open enquiries closed

Stamp duty land tax (SDLT) is a tax on mobility and as such can be hard to justify on moral grounds. That could explain why avoidance has become widespread.

The first case concerning SDLT planning has been decided by the First-Tier Tribunal (Tax) in favour of the taxpayer. *DV3 RS Limited Partnership v Commissioners for HM Revenue & Customs* [2011] UKFTT 138 (TC) concerned the purchase of the Dickins & Jones building in London's Regent Street for £65.1m using a SDLT mitigation scheme. A challenge was brought against an HM Revenue & Customs (HMRC) ruling that the tax planning arrangement used by the taxpayer did not prevent a payment of £2.6m in SDLT.

Legal & General (L&G) sold the property to DV3 Regent Street Ltd (DV3), which then sold it to a limited partnership formed under the laws of the British Virgin Islands (BVI). It was agreed that both sale transactions would constitute a subsale (technically, a transfer of rights) for SDLT purposes. It was accepted that the taxpayer, DV3, was a partner in the BVI partnership and connected to all the other partners. The BVI partnership brought the appeal.

Case analysis

The transaction between DV3 and L&G did not give rise to tax because it qualified for subsale relief. Under the subsale rules, tax would be charged only on the price paid (£x) by the BVI partnership either to DV3 or L&G.

The taxpayer argued that since the partnership was purchasing from one of its own members, special computational rules would apply to determine £x.



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Key points

- DV3 relates to planning using a subsale to a partnership
- The decision by the First-Tier Tribunal (Tax) will be significant for both past and future tax planning arrangements
- However, HMRC is likely to appeal against the tribunal's decision

HMRC claimed that the interaction between the subsale and partnership rules meant that the partnership was not purchasing from one of its members and tax was therefore due on the sum paid to L&G.

The SDLT computational rules for partnership purchases are complex and, as was acknowledged by the judge, do not always work. Generally, when a partnership purchases from a purchaser, SDLT is charged only on the amount given up. So if A, B, C and D are in partnership on an equal basis, and the partnership buys property from A, only 75% of the value of the property will be subject to tax. If A were connected to the other partners, the amount treated as being retained by A would increase proportionately and the amount subject to tax would likewise decrease.

The partnership argued that since all the partners were connected to DV3, none of the value was given up by DV3 and £x would therefore be £0.

In finding for the taxpayer, the judge concluded that subsale relief created a notional contract involving all three parties. However, this did not mean that L&G should be treated as the seller. In reviewing the law, the judge made it clear

Far from being a shoppers' paradise, the sale of the Dickins & Jones building has been a tax headache

that the effect of the legislation in the case of a subsale (A to B and then B to C, all of which complete contemporaneously) would not deem A to have sold to C. Applying a purposive interpretation of the legislation did not change this view.

Wider implications

The decision is significant because it is the first challenge to SDLT planning that has been litigated. It will have broad ramifications for future tax planning, much of which relies on the same technical points as were raised in this case.

Although at the time of writing HMRC has not lodged an appeal, it is likely to do so. The scheme itself is no longer in use, following changes to the law. However, a number of cases involving this scheme or the partnership rules remain outstanding.

As has been well publicised by HMRC, the Stamp Office has set its sights firmly on SDLT planning and has published a list of schemes that it dislikes. All involve a subsale, and one reflects the scheme in *DV3*. If HMRC does not appeal, much of the wind will be taken out of its sails. It will, in many cases, be left looking for schemes that fall down on implementation as opposed to a principles approach.

Those who have used this scheme, or a variant of it, will be pleased with the decision, and those with open HMRC enquiries may want to apply for the case to be closed on the basis of the *DV3* ruling.

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