

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY
Revenue Committee

Please reply to:

Vairao House
3 Airlie Road
Winchester
SO22 4NQ

01962 844440

Michael McLachlan Esq
H M Revenue and Customs
Property VAT Team
Room 3E/12
100 Parliament Street
London SW1A 2BQ

e-mail: michael.mclachlan@hmrc.gsi.gov.uk

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Dear Mr McLachlan

Schedule 10, para 8 replacement Consultation

The Society represents a considerable number of property lawyers practising in Central London.

The Committee supports the Commissioners' objectives in putting forward a substituted text, but feels that the exercise being undertaken should also involve further (and final) clarification of:

- (a) the disclosed nominee position, in relation to which there has been litigation within the past year; and
- (b) the use of interposed registrations, which have, in the past, been instrumental in creating confusion, including, at one stage, in relation to the bad debt procedures.

For conveyancing purposes, especially where English professional partnerships are concerned, the use of bare trustees is sometimes inevitable. It is clearly the intention of the draftsman of the revised text that this should be the case, indeed this makes it far clearer than at present that it is only bare trusteeships which should normally be within the scope of this paragraph.

- Nonetheless, it is clear from case law which pre-dated the introduction of this provision in 1989, *Bird Semple & Crawford Herron v. C & E Commrs*,¹ that the provision was

¹ (1986) VATTR 218

strictly speaking unnecessary where the nominee ship was a disclosed one. Yet that principle was, for reasons which are unclear, challenged (albeit unsuccessfully) in *Lester Aldridge v. C & E Commrs.*²

- Indeed, although an undisclosed nominee ship did not operate in a see-through manner in *Associated Concrete Repairs Ltd v. C & E Commrs.*,³ it is understood that it did in fact so operate in an unpublished decision not involving land.⁴ While para 8 would be required to assist the taxpayer in the former case, whether this is strictly necessary in the light of the latter is uncertain and the point of principle needs to be clarified.
- In such situations, artificial interposed registrations are used, with the prior consent of the Commissioners, to achieve recoveries where the current text para 8 is either not in point or gives rise to an area of doubt. It is felt, however, that such situations should be kept to a minimum and that the revised text should be looked at with this objective in mind.

There will, however, be commercial situations (such as the acquisition of “jigsaw” pieces for a future development) where the purchaser will wish to operate through an interposed registration and in which it would be desirable for this to be facilitated.

Yours sincerely

W J de Souza
Chairman

² LON/03/1020

³ LON/98/827

⁴ LON/98/278