

Letter to Teresa Villiers MP

From: amalex@tiscali.co.uk [mailto:amalex@tiscali.co.uk]

Sent: 18 May 2007 13:21

To: theresa@theresavilliers.co.uk

Subject: Finance Bill, clause 70 [FA 2003, ss.75A-75C, a replacement for SI 2006/3237]

Dear Mrs Villiers,

Finance Bill, clause 70 [FA 2003, ss.75A-75C, a replacement for SI 2006/3237] Once again, I am writing to you in relation to a taxation matter, in my capacity as a Member of the City of Westminster and Holborn Law Society Revenue Law Committee, in the hope that if the point being made has not already been drawn to your attention, you will share our concern.

This is a very wide SDLT anti-avoidance provision and I do appreciate that the Opposition is normally reluctant to challenge anti-avoidance legislation, and especially so when there is clear evidence (as in this particular case) of a small minority having abused particular reliefs built into FA 2006 and earlier statutes.

At the end of the day, however, ordinary conveyancers have to be able to advise clients entering into ordinary transactions whether what they wish to do might fall foul of these provisions even though no tax avoidance is being envisaged on their own part.

Although not much of a problem is being met at the moment, this is purely because, before anyone could come within the scope of this legislation, it is necessary for some other conveyancing transaction to have taken place since 5 December 2006. And although the rate of turnover in property is sometimes higher than imagined (perhaps every two to three years in some categories), not many resales will have taken place since the date of last year's Pre-Budget Report. In two or three years' time, however, a significant proportion of conveyancing transactions would seem to be capable of coming within the scope of this code.

The scope of the new provisions is to be found, it has been agreed between HMRC and the professional bodies who have been holding talks with them, in sections 75A(1)(a) and (b), read together. It is of the essence to this that one has to identify a "V" who has engaged in a conveyancing transaction since 5 December 2006 and a "P" who has obtained (sometimes but usually not directly from "V") a conveyancing interest (albeit not necessarily the same one) in the property disposed of by "V" in certain circumstances in which the full amount of SDLT has not been paid.

The area of concern to conveyancers is the possible scope of the words "involved in connection with" in s.75A(1)(b), the fear being that any subsequent purchaser or tenant of the same property might constitute "P" purely because he acquired an interest in that property at a subsequent date.

HMRC have said that it is (a) not their intention but also (b) not a permissible construction of the words in question, for the necessary linkage between "V" and "P" to be confined to either mere sequence or relationship to the same property and that an element of "deliberation"

is required before a particular person can find himself within the scope of being a possible "P".

While it is very much hoped that the Courts would interpret the provisions in question in this way, it is not possible to say with certainty on the current wording where the line is to be drawn. The issue is of course of critical importance to any subsequent purchaser or tenant of the property originally disposed of by "V" after 5 December 2006 because the result of coming within this code would be a substantial increase in the amount of SDLT payable, when measured against the actual transaction entered into by "P" and any person with whom he has been acting in concert. It goes without saying that a totally innocent potential "P" should not be subjected to the possibility of being landed with such a tax charge.

It will, of course, be for the conveyancer for each potential "P" both to identify the possibility of a charge arising under the new code (and this could be by reference to transactions of which he is either not aware or for which he cannot obtain full information) and to give proper professional advice to his client.

Conveyancers both in the City of Westminster and Holborn Law Society area and elsewhere are seriously concerned as to the potential liability of future clients not engaged actively in tax

avoidance under the "involved in connection with" formulation which HMRC have expressed an unwillingness to change.

I wonder if it would, in these circumstances, be possible for the Opposition to put down a probing amendment, say to add "materially"

before the offending phrase, with a view to extracting from the relevant Minister a *Pepper v. Hart* utterance limiting the effect of that phrase to what HMRC is understood by members of the Stamp Taxes Practitioners Group to have stated to be its intended meaning, i.e.

that:

"There must be an element of deliberation beyond mere sequence or involvement in relation to the same property before a person can be within the scope of 'P'".

If it would be convenient to you, arrangements could be made for two or three conveyancers who have a particular knowledge of the SDLT system to call upon you at the House to elaborate upon their concerns if such a statement cannot be read into Hansard. The Guidance which HMRC are proposing to issue at the time of Royal Assent will not be a satisfactory alternative to this because:

- (a) it cannot be relied on before the Courts; and
- (b) taxpayers generally will be affected, as against, for instance, REIT transmuters who, by definition, have to be public companies.