TAXREP 33/12

(ICAEW REP 109/12)

ICAEW TAX REPRESENTATION

FINANCE (No 4) BILL 2012 - BRIEFING

STAMP DUTY LAND TAX: HIGHER RATE FOR CERTAIN TRANSACTIONS - CLAUSE 212 AND SCHEDULE 24

Briefing submitted in June 2012 by ICAEW Tax Faculty in relation to the above provisions in Finance (No 4) Bill 2012

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INTRODUCTION

1. ICAEW submitted Briefings to the Public Bill Committee on various clauses in Finance (No 4) Bill 2012. The present TAXREP reproduces the content of the Briefing on the provisions in clause 212 and Schedule 24 re Stamp Duty Land Tax: Higher rate for certain transactions.

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

4. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

BRIEFING

STAMP DUTY LAND TAX: HIGHER RATE FOR CERTAIN TRANSACTIONS
(Clause 212, Schedule 34)

Clause 212, Schedule 34 – Stamp Duty Land Tax: Higher rate for certain transactions

Clause 212 and Schedule 34 introduce a higher rate of Stamp Duty Land Tax of 15% to be charged on the acquisition of interests in high-value dwellings by certain persons and bodies of persons.

We would be happy to provide further information or meet to discuss these issues in more detail. For further information please contact Tax Faculty head Frank Haskew on 020 7920 8618 or Sarah Buckley, Public Affairs Manager, on 020 7920 8694.

Finance Bill 2012

New Schedule 4A paragraph 5(1)(b) requires a property development company to have 'carried on the [property development] business for at least two years' in order to be excluded from the 15% charge under the provisions of paragraph 3(3)(a).

A new property development will, for instance, often by undertaken by a joint venture company formed by several existing property development companies. As it is a new company, and has not been carrying on a property development business for two years, the new joint venture company will fall foul of the paragraph 5(1)(b) condition.

As a result, under the existing provisions, SDLT at a rate of 15% will apply to the acquisition. This is an unintended consequence of the existing drafting which needs to be amended to reflect how existing property development companies operate in relation to major new developments.

This issue was raised at the HMRC Finance Bill Open Day two months ago on 27 April 2012 and if this is considered to be a valid problem then we are surprised that a Government Amendment has not yet been put forward. This is even more surprising because of the importance of the construction industry in the UK economy and to the growth agenda.

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)