TC06466

Appeal numbers: TC/2015/04831
TC/2016/02820
TC/2017/00019
TC/2017/00020

STAMP DUTY LAND TAX – Avoidance scheme – Purchase of property by unlimited company – Reduction in capital and dividend in specie of the property – Whether contribution for shares is consideration given indirectly for purchase of property (s 45(3)(b)(i) Finance Act 2003) – Whether s 75A Finance Act 2003 engaged

FIRST-TIER TRIBUNAL
TAX CHAMBER

(1) MICHAEL GEERING & JEAN GEERING
(2) STAPLES GREEN PROPERTIES
(3) TRACEY ROBINSON
(4) 06335036 (FORMERLY BROAD OAKS COUNTRY HOUSE) **Appellants**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE JOHN BROOKS

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1 on 28 February 2018

Patrick Cannon, counsel, instructed by ME Office Limited, for the Appellants

Peter Gerard Kane of HM Revenue and Customs, for the Respondents

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DECISION

1. Unless otherwise stated, all subsequent statutory references are to the provisions of the Finance Act 2003.

2. Mr Michael Geering, Mrs Jean Geering (together the first appellant) and Ms Tracey Robinson (the third appellant) appeal against Revenue Determinations for Stamp Duty Land Tax ("SDLT") issued by HM Revenue and Customs ("HMRC") pursuant to paragraph 5 of schedule 10 in the sums of £80,000 and £83,255.02 respectively.

3. Staples Green Properties (the second appellant) and 063350356 (formerly Broad Oaks Country House, the fourth appellant), both private unlimited companies incorporated under the Companies Act 2006, appeal against Discovery Assessments, issued by HMRC under paragraph 28 of schedule 10, for SDLT in the sums of £80,000 and £83,255.02 respectively.

4. The Determinations and Assessments were issued as HMRC considered that there had been a failure to deliver SDLT returns in relation to a property purchased, for £2,000,000 in the case of Mr and Mrs Geering and Staples Green Properties and a property purchased for £2,081,398 in the case of Ms Robinson and 063350356 (formerly Broad Oaks Country House), under a marketed "distribution in specie" avoidance scheme. The scheme, which sought to take advantage of the "disregard" contained in s 45(3) (which is set out below), is similar to that used unsuccessfully by the taxpayers in *Vardy Properties and Vardy Properties (Teesside) Limited v HMRC* [2012] SFTD 1398 (TC) ("*Vardy*").

5. The material parts of s 45 (as in force at the time of the transactions with which these appeals are concerned) provided:

> **45 Contract and conveyance: effect of transfer of rights**
>
> (1) This section applies where—
>
> (a) a contract for a land transaction ("the original contract") is entered into under which the transaction is to be completed by a conveyance,
>
> (b) there is an assignment, subsale or other transaction (relating to the whole or part of the subject-matter of the original contract) as a result of which a person other than the original purchaser becomes entitled to call for a conveyance to him, and
>
> (c) paragraph 12B of Schedule 17A (assignment of agreement for lease) does not apply.
>
> References in the following provisions of this section to a transfer of rights are to any such assignment, subsale or other transaction, and references to the transferor and the transferee shall be read accordingly.
>
> (2) The transferee is not regarded as entering into a land transaction by reason of the transfer of rights, but section 44 (contract and

> conveyance) has effect in accordance with the following provisions of this section.
>
> (3) That section [s 44] applies as if there were a contract for a land transaction (a "secondary contract") under which—
>
> (a) the transferee is the purchaser, and
>
> (b) the consideration for the transaction is—
>
> (i) so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by the transferee or a person connected with him, and
>
> (ii) the consideration given for the transfer of rights.
>
> The substantial performance or completion of the original contract at the same time as, and in connection with, the substantial performance or completion of the secondary contract shall be disregarded except in a case where the secondary contract gives rise to a transaction that is exempt from charge by virtue of any of sections 71A to 73 (which relate to alternative property finance).

6. It is not disputed that the arrangements utilised by the appellants in this case were in accordance with the following explanation, contained in a letter of 2 November 2010 from the promoter Premier Strategies Limited, to Mr and Mrs Geering:

> "The first step is for you to establish an unlimited company. The formation of the company and the preparation of all associated documentation will be dealt with by Premier Strategies Limited. The company must be unlimited in order for it to make a later distribution of the property without having to observe the formalities of limited companies.
>
> Once the company has been formed you will subscribe for shares equal to the value of the deposit to be paid to the vendor. The company will then enter into a contract to purchase the property from the vendor for the agreed purchase price and will pay the deposit. Following exchange of this contract the company will resolve to reduce its share capital by way of a distribution in specie of the property to the shareholder (ie you). This resolution shall be stated to be effective conditional upon and simultaneous with the completion of the contract between the vendor and the unlimited company.
>
> Prior to completion you will subscribe for additional shares in the company using a promissory note (effecting an undertaking to pay the subscription monies at a future date). Once this has been done you will hold shares equal in value to the price to be paid for the property by the unlimited company.
>
> On the day of completion the mortgage monies will be paid across to the vendor by the conveyancing solicitor, thus satisfying the promissory note. At the point of completion the resolution entered into by the unlimited company will take effect and the property will be

> transferred from the company to you. Title to the property will then be registered in your name."

The letter continued:

> "In order for the strategy to operate as intended it is important that the vendor is not connected with the second transaction and is not made aware of the fact that the property is to be transferred to you following the purchase by the unlimited company. If queries are raised as to why the property is being purchased by a company these should be dealt with by your conveyancing solicitor [instructed by Premier Strategies Limited]."

7. Under these arrangements Mr and Mrs Geering subscribed for shares in Staples Green Properties, the unlimited company formed under the arrangements described above of which they were appointed directors, with their total contribution to its share capital being £2,000,000. The total contribution of Ms Robinson to the share capital of 063350356 (formerly Broad Oaks Country House), an unlimited company of which she was director formed in accordance with above arrangements, was £2,081,398.

8. Staples Green Properties purchased a property in Cobham, Surrey, from unconnected vendors, a Mr Cooper and Ms Wright, on 7 December 2010 for £2,000,000 and, on completion, transferred it to Mr and Mrs Geering as a distribution in specie by way of a reduction of its share capital in accordance with a special resolution dated 7 December 2010. 063350356 (formerly Broad Oaks Country House) purchased a property, 'Broad Oaks' in Windermere, from unconnected vendors, a Mr and Mrs Paveley, for £2,081,398 on 16 October 2007 and, on completion, transferred it to Ms Robinson as a distribution in specie by way of a reduction of share capital in accordance with a special resolution of 16 October 2007.

9. However, in simple terms, which for convenience I shall adopt, the parties to the scheme or arrangements can be described as:

(1) A – the unconnected vendors of the properties;

(2) B – an unlimited company in which C are both shareholders and directors (in this case Staples Green Properties and 063350356 (formerly Broad Oaks Country House)); and

(3) C – the shareholders who ultimately receive the property purchased by B by way of a distribution in specie from B (ie Mr and Mrs Geering and Ms Robinson).

10. It is common ground that the arrangements used in this case do not suffer from the failure in *Vardy* to comply with s 270 of the Companies Act 1985 (now s 836 Companies Act 2006) as the distributions in specie were made by way of a reduction in share capital (rather than by dividend as in *Vardy*) and are not therefore within the requirement to produce initial accounts (see s 829 of the Companies Act 2006: "distribution" not to include reductions in share capital). As such, it is accepted by HMRC that, because of the disregard in s 45(3), neither Staples Green Properties nor 063350356 (formerly Broad Oaks Country House) has a liability to SDLT. Accordingly, their appeals succeed and Discovery Assessments reduced to nil.

11. In relation to the Determinations, Mr Peter Gerard Kane of HMRC, relying on obiter observations of the Tribunal in *Vardy*, contends that the share capital contribution paid by C to B (which enabled B to acquire the property) was consideration to be given indirectly by C and, as such, is "consideration" as defined by s 45(3)(b)(i). Alternatively, he submits that the anti-avoidance provisions of s 75A apply.

12. Mr Patrick Cannon, who appears for the appellants, contends that the obiter remarks of the Tribunal in *Vardy* should not be followed. First, he says, the Tribunal was wrong to treat the relevant part of the monies subscribed by C for shares in that case as indirectly given by C as consideration for the purchase of property as it confused the giving by C of funding to B by way of share capital with the giving of indirect consideration by C under the original contract; secondly, that any delay in the transfer of the property from B to C could result in a double charge to SDLT – on the A to B transfer (under s 44) and the transfer from B to C (under s 45(3)(b)(i)) – notwithstanding there being only one payment of consideration passed in the real world, ie from B to A; and finally the possibility recognised, but dismissed, by the Tribunal in *Vardy* of double-counting of the same amount by including the sum subscribed by C to B as the indirect provision of consideration under the secondary contract when read with s 45(3)(b)(ii).

13. Additionally, Mr Cannon contends that s 75A does not apply to the transactions undertaken by the appellants in the circumstances of this case.

14. In *Vardy* the Tribunal (Judge Poole and Ms Hunter) held, at [63] that, s 45 was not engaged because there had been a failure to comply with s 270 of the Companies Act 1985. However, the Tribunal went on to consider the "further points that would arise if s 45 had been engaged" in case its view of the company law point "was wrong" (see at [65]). In relation to the question of what, if any consideration should be attributed to the notional secondary contract under s 45(3)(b)(i), the Tribunal observed, albeit obiter, that:

> "95. We analyse the situation as follows. Section 45(3) posits an entirely notional "secondary contract" and applies section 44 on the basis of that contract. It specifies the key features of the secondary contract. It provides that the transferee is the purchaser under it (which is required in order to make the transferee potentially liable to SDLT as a result of it); the other key feature it needs to specify (in order to enable the resulting SDLT to be calculated) is the consideration. The first limb of consideration it specifies (in section 45(3)(b)(i)) is:
>
> > "so much of the consideration under the original contract as is referable to the subject-matter of the transfer of rights and is to be given (directly or indirectly) by the transferee or a person connected with him"
>
> 96. The structure of this limb is deceptively complex. It requires first the identification of the consideration under the original contract. In tacit acknowledgement that the transfer of rights may relate to only part of the property comprised in the original contract, it requires the consideration attributable to that part to be identified. In the present

> case (where the transfer of rights related to the whole of the property comprised in the original contract), that is easy – the whole of the original consideration (£7.25 million) potentially falls within the formulation.
>
> 97. But the final step is more complex. It brings into charge so much of that consideration as "is to be given (directly or indirectly) by the transferee...". It is implicit in this form of words, and the context of section 45(3), that it is to be applied at the moment the transfer of rights (i.e. in this case the declaration of the Dividend) occurs. As at that moment, how much of the total £7.25 million purchase price for the Property could it be said was "to be given (directly or indirectly)" by VPT [the shareholder or C]?
>
> 98. In relation to this question, in the light of the general scheme and purpose of section 45, we are satisfied that Miss McCarthy's [counsel for HMRC] answer is right. A pre-ordained scheme has been established in which C, at an early stage, provides the cash to B which will ultimately be used by B to pay A for the purchase of the property. In those circumstances, we are satisfied that when, as a result of a later step in the scheme, there is a transfer of rights which ultimately entitles C to call for a conveyance of the property, it can be said that A's purchase price, though it will be received from B, is "to be given indirectly" by C within the meaning of section 45(3)(b)(i).
>
> 99. We recognise that the £7.4 million in this case was subscribed by VPT for shares in VP [the company or B], but we consider that does not prevent it (or the relevant part of it) from being regarded as also indirectly given as consideration for the purchase of the Property. This is not, as Mr Quinlan [counsel for the taxpayers] asserted, a "reattribution" of consideration from one thing to another; it is a recognition that the direct payment of consideration for an immediate purpose may also amount to the indirect provision of consideration for another.
>
> 100. It follows therefore that we consider the entire £7.25 million purchase price paid by VP and funded by VPT is to be regarded as consideration for the secondary contract arising under section 45(3)(b)(i). Thus, were it not for our decision on the company law argument, we would allow VP's appeal in full and dismiss VPT's appeal in full.

15. Although the issue (having been conceded by counsel for the taxpayer who relied on a procedural point) was not argued in *Crest Nicholson (Wainscott) Operations and others v HMRC* [2017] SFTD 481, Judge Clark, at [190], found the above reasoning of the Tribunal in *Vardy*, although "strictly obiter", to be "persuasive".

16. In the present case as it is not disputed that the transfer of rights related to the whole of the property comprised in the original contracts, the "first step" of the application of s 45(3)(b)(i) is, as in *Vardy*, "easy". The consideration that potentially falls within the formulation is the whole of the original consideration, namely the £2,000,000 and £2,081,398 paid for the properties.

17. However, the issue between the parties concerns the final step, how much of the total purchase price, the £2,000,000 and £2,081,398 in this case, can be said "to be given (directly or indirectly)" by Mr and Mrs Geering and Ms Robinson respectively at the moment the transfer of rights occurs.

18. Mr Kane says that in this case, as in *Vardy*, the steps taken were pre-ordained with the intention that the monies paid for share subscriptions by C would be used by B to purchase the properties from A. He contends that the conclusion of the Tribunal in *Vardy*, that the entire purchase price was given indirectly by C, was correct and should be applied here. It is, he submits, entirely consistent with how s 45(3) was drafted. It addresses the "other transaction" and, by use of the words "as if there were a contract", imputes a notional secondary contract and widely drawn instruction as to how the consideration for that secondary contract is to be computed in the "SDLT world". This is recognised by s 45(3)(b)(i) as monies paid as contributions for shares being "consideration" (without which B could not pay A for the property under the terms of the original contract) in the "SDLT world" even though in the "real world" these amounts remain subscription monies.

19. Mr Cannon, who accepts that the transactions in this case were pre-ordained, says that it is not unusual in property transactions for a conveyancer, particularly where there is a subsale, to get his "ducks in a row" before completion. However, in the present case he contends that there are three reasons why *Vardy* should not be applied.

20. First, he submits that the analysis of the Tribunal in *Vardy* that the provisions of funding by C by way of share capital to B is also indirect consideration by C for the acquisition of the property from A was wrong. He argues that the correct analysis is that C provided funding to B (in this case by way of share capital but it could have been by way of a loan) and in doing so C was not giving consideration under the A – B contract as C, which advanced 100% of the purchase price would be a 100% beneficiary under a resulting trust and entitled to call for the conveyance of the property without waiting for a "subsale or other transaction". Accordingly, Mr Cannon contends, if the obiter remarks in *Vardy* were correct s 45 would not be engaged as C is a purchaser under general equitable principles.

21. In support of his argument Mr Cannon cites the following passages:

(1) from Snell's Equity (33rd ed. at 25-003):

> "[W]here A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of joint purchase by A and B in shares proportionate to their contributions.";

(2) from Lewin on Trusts (19th ed. at 9-021):

> "The general rule is that when real or personal property is purchased in the name of a stranger, a resulting trust is presumed in favour of the

person who paid the purchase money, if he did so in the character of purchaser"; and

(3) from Megarry & Wade, The Law of Real Property (8th ed. at 11-016):

> "Where land is conveyed to one person, but the purchase-money is provided by another as purchaser, there is presumed to be a resulting trust in favour of the person providing the purchase-money. If V conveys land to P, A being the real purchaser and as such providing the purchase-money, prima facie P holds on a resulting trust for A. Similarly, if A provides part of the purchase-money, provided this is at the time of purchase, he acquires a proportionate share in equity. Nevertheless these are only presumptions, and will not apply in the following cases.
>
> (i) Where they are rebutted by evidence that P was intended to benefit, A's money being in effect a gift or loan to P.
>
> (ii) Where they are rebutted by the presumption of advancement which arises if P is the wife or child of A.
>
> (iii) Where a family home is held jointly, but the equitable interests are undeclared, the Supreme Court has held in *Jones v Kernott* that the "time has come to make it clear, in line with *Stack v Dowden* (see also *Abbott v Abbott* [2007] UKPC 53, [2007] 2 All E.R. 432), that in the case of the purchase of a house or flat in joint names for joint occupation by a married or unmarried couple, where both are responsible for any mortgage, there is no presumption of a resulting trust arising from their having contributed to the deposit (or indeed the rest of the purchase) in unequal shares". In such cases, the size of the beneficial interests is to be determined by reference to the presumption that "equity follows the law" or the inferred or imputed common intention of the parties."

22. Mr Cannon also relies on *Westdeutsche, Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 in which Lord Browne-Wilkinson said, at 708:

> "Under existing law a resulting trust arises in two sets of circumstances: (A) Where A makes a voluntary payment to B or pays (wholly or in part for the purchase of property which is vested in B alone or in the joint names of A and B there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a presumption, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer: see *Underhill and Hayton (supra)* p. 317 *et seq.; Vandervell v. I.R.C.* [1967] 2 A.C. 291 at 312 *et seq.; In re Vandervell (No. 2)* [1974] Ch. 269 at 288 *et seq.* (B) Where A transfers property to B on express trusts, but the trusts declared do not exhaust the whole beneficial

> interest: *ibid.* and *Barclays Bank v. Quistclose Investments Ltd.* [1970] A.C. 567."

23. Mr Cannon deals with Mr Kane's argument that s 45(3)(b)(i), a deeming provision, operates in the "SDLT world" to treat the contribution to shares as consideration under the "secondary contract" whilst remaining subscription monies in the "real world", by saying that a deeming provision should only be taken as far as necessary which, in the present case is only in relation to the notional "secondary contract". It therefore follows, he submits, that the reference in s 43(3)(b)(i) to "so much of the consideration under the original contract as is referable to the subject matter of the transfer of rights", ie the property, is to actual or "real world" consideration passing under the A – B contract.

24. I accept Mr Cannon's argument that if monies given for the subscription for shares in B by C is "real world" consideration given indirectly by C to B for the purchase of the property, it must follow that C obtains a beneficial interest in that property under a resulting trust in accordance with the authorities he cites (see paragraphs 21 and 22, above). However, although the Tribunal at [99] in *Vardy* did refer to subscription monies "as being regarded as also given in consideration for the purchase of the property", it is, in my judgment, clear from the preceding and subsequent paragraphs, [98] and [100], that the Tribunal was referring to consideration given "within the meaning" or "arising under" s 45(3)(b)(i) and it should therefore be construed accordingly, namely as consideration under the notional secondary contract computed on the basis of the consideration of the contract between A and B. To use the descriptions adopted by the parties such consideration would be in the "SDLT world" rather than the "real world" where the sums paid by C to B would still be a contribution for shares.

25. However, if I am wrong and the consideration under the notional "secondary contract" is "real world" consideration C would not escape a liability to SDLT. This is because as C has provided the purchase money to B, B holds the property as bare trustee on a resulting trust for C who is absolutely entitled to the property against B (see *Dyer v Dyer* (1788) 2 Cox Eq 92) and, although s 45 would not be engaged, paragraph 3(1) of schedule 16 would apply. This provides:

> "… where a person acquires a chargeable interest [or an interest in a partnership][2] as bare trustee, this Part applies as if the interest were vested in, and the acts of the trustee in relation to it were the acts of, the person or persons for whom he is trustee."

26. Mr Cannon accepts that this would be the result if C gave indirect consideration for the acquisition of the property from A, but contends that it supports his argument that the monies paid by C to B as subscription for shares cannot be indirect consideration for the acquisition of the property by B from A. However, I do not agree and reject this argument as something of a tautology and consider the Tribunal in *Vardy* to be correct in recognising, at [99], that, "the direct payment of consideration for an immediate purpose may also amount to the indirect provision of consideration for another."

27. The second reason of Mr Cannon for contending that s 45(3)(b)(i) does not embrace the share capital contribution by C is that if there was a delay in the transfer of the property from B to C after it had been acquired by B from A, two charges to SDLT would arise, the first on the A to B transfer under s 44, which would not be disregarded under s 45 as it was not completed or substantially performed "at the same time as" the B to C transfer, which would also be subject to SDLT on the consideration under the notional secondary contract under s 45(3)(b)(i). This he says, although the logical result of the interpretation of s 45(3)(b)(i) by the Tribunal in *Vardy*, would be unintended and contrary to the purpose of the legislation because, in reality, there had been only one sales transaction.

28. I agree that in the event of a delay between the A to B and B to C transfers, both transactions would be liable to SDLT but do not consider this to be contrary to the clear and unambiguous words used in s 45(3) which provide that the disregard only applies where there is:

> "… substantial performance or completion of the original contract **at the same time** as … the substantial performance or completion of the secondary contract" (emphasis added).

There is some support for such a view in *Mansion Estates Ltd v Hayre & Co* [2016] EWHC 92 (Ch) 92 in which HHJ Saffman, sitting as a judge the High Court accepted, at [19], such an interpretation of s 45 in circumstances where it had been disputed that a purchase and subsale were simultaneous transactions.

29. Although Mr Cannon refers to a "number of valid reasons" for the A to B and B to C transfers not being simultaneous, such as commercial or legal delays, given that in reality such a double charge to SDLT is most likely to arise in the event of a failure to properly implement an avoidance scheme such as that utilised by the appellants in this case, I am reminded of the observation of Lord Greene MR in *Lord Howard de Walden v Inland Revenue Commissioners* [1942] 1 KB 389 at 397 that:

> "It scarcely lies in the mouth of the taxpayer who plays with fire to complain of burnt fingers."

30. Mr Cannon's third reason for contending that the Tribunal in *Vardy* incorrectly interpreted s 45(3)(b)(i) is the absence of any provision in s 45 to preclude double counting of the same consideration under s 45(3)(b)(i) when read together with s 45(3)(b)(ii). He says that this was "in effect" recognised by the Tribunal in *Vardy* when it observed at [102] that:

> "… it is worth repeating the point made at [88] above, to the effect that there should be no "double counting" of consideration; to the extent that any amount is brought into account under section 45(3)(b)(i), we consider the same amount cannot also be brought into account under section 45(3)(b)(ii)."

He argues that if s 45(3)(b)(i) is read correctly, so as not to permit the inclusion, as indirect consideration of the amount subscribed by C as share capital, double counting would not arise and that the caveat above, which is not reflected in the legislation, would not be necessary.

31. However, I agree with Mr Kane that the Tribunal in *Vardy* did not acknowledge that consideration under s 45(3)(b)(i) could also be consideration under s 45(3)(b)(ii) and, rather than add a caveat as Mr Cannon contends, the Tribunal summarised the application of the section in the following manner:

> "87. Standing back and looking at section 45 in the round, it clearly contemplates three categories of transaction taking effect as a "transfer of rights": assignments, sub-sales and "other transactions... as a result of which a person other than the original purchaser becomes entitled to call for a conveyance.." (see section 45(1)(b)). When fixing the consideration to be attributed to the secondary contract arising in any of those three categories, it does not focus at all on the type of transaction, it simply requires (in section 45(3)(b)) the aggregation of two things. In very broad terms, those two things are the consideration given by C (not necessarily to B, though that will generally be the case) for the right to acquire the property and the consideration given by C (not necessarily to A, though that will generally be the case) for the property itself.
>
> 88. It is inherent in this dichotomy that any consideration given by C can only be regarded as attributable to one or the other – i.e. there should be no "double counting" of the same consideration as attributable to both the right to acquire the property and the property itself."

32. As such, I reject Mr Cannon's third reason for contending that the Tribunal in *Vardy* wrongly interpreted s 45(3) and consider that the Tribunal's construction of the provision in that case was correct and should therefore be applied in the present case.

33. Given my conclusion it is not necessary to consider the alternative argument advanced by HMRC that s 75A, the anti-avoidance provision, applies to the circumstances of this case. However, as I heard argument on the issue, and in case of any further appeal, I shall briefly explain why I consider it to be engaged.

34. Insofar as it applies in this case s 75A provides:

> **75A Anti-avoidance**
>
> (1) This section applies where–
>
> (a) one person (V) disposes of a chargeable interest and another person (P) acquires either it or a chargeable interest deriving from it,
>
> (b) a number of transactions (including the disposal and acquisition) are involved in connection with the disposal and acquisition ("the scheme transactions"), and
>
> (c) the sum of the amounts of stamp duty land tax payable in respect of the scheme transactions is less than the amount that would be payable on a notional land transaction effecting the acquisition of V´s chargeable interest by P on its disposal by V.
>
> (2) In subsection (1) "transaction" includes, in particular–

(a) a non-land transaction,

(b) an agreement, offer or undertaking not to take specified action,

(c) any kind of arrangement whether or not it could otherwise be described as a transaction, and

(d) a transaction which takes place after the acquisition by P of the chargeable interest.

…

(4) Where this section applies–

(a) any of the scheme transactions which is a land transaction shall be disregarded for the purposes of this Part, but

(b) there shall be a notional land transaction for the purposes of this Part effecting the acquisition of V´s chargeable interest by P on its disposal by V.

35. In *Project Blue Limited v HMRC* [2013] UKFTT 378 (TC) the Tribunal (Judge Brannan and Ms Watts Davies MHCIMA FCIPD**)** having concluded, at [238] that, "each of the subparagraphs (a) – (c) of subsection (1) should be construed in the context of the subparagraphs, rather than as self-standing tests", noted, at [250], that

> "As we have seen, in section 75A the phrase "in connection with" is deliberately used in conjunction with the word "involved." In our view, the word "involved" must be intended to qualify the phrase "in connection with." The word "involved" denotes some form of participation (i.e. involvement). Thus, a transaction which is part of a series of transactions will not be "involved" with other transactions simply because it is part of a series or sequence of successive conveyancing transactions. The linkage must be more than merely being a party in a chain of transactions and the test must be more than a "but for" test (or, as the classicists would put, it a *sine qua non* test) otherwise the word "involved" would be deprived of significant meaning."

36. Mr Cannon contends that in the present case neither the original purchase by B nor the "other transaction" between B and C were "involved in connection with" the disposal by A (V for the purposes of s 75A) as, unlike in *Project Blue*, the vendor, A, had no involvement or even knowledge of the arrangements effected by the appellants subsequent to the disposal.

37. However, I agree with Mr Kane that there is nothing in *Project Blue* to suggest that A (or V) must be aware of any subsequent transactions. As the documentation setting out the arrangements entered into in the present case clearly contemplate the transfer in specie of the property from B to C after and dependent on its sale by A to B, I consider that the "other transaction", ie the transfer from B to C to, be "involved in connection with" the disposal by A and acquisition by C. As such s 75A is engaged resulting in a notional transaction effecting the acquisition of A's chargeable interest by C, in accordance with s 75A(4) for which the chargeable consideration, by virtue of s 75A(5), is the largest amount paid by B ie the £2,000,000 and £2,081, 398 paid to

the vendors of each of the properties by Staples Green Properties and 063350356 (formerly Broad Oaks Country House) respectively.

38. Therefore, for the reasons above, the appeals of Mr and Mrs Geering and Ms Robinson are dismissed. However, the appeals of Staples Green Properties and 063350356 (formerly Broad Oaks Country House) are allowed (see paragraph 10, above).

39. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

JOHN BROOKS
TRIBUNAL JUDGE

RELEASE DATE: 23 APRIL 2018