

RUGBY FOOTBALL UNION

Note on Stamp Duty Land Tax in the context of incorporations of rugby clubs as companies limited by guarantee

1. Stamp Duty Land Tax ("**SDLT**") is charged on the chargeable consideration for any land transfer. Certain reliefs and exceptions apply which mean that in certain cases it is not payable.
2. In many straightforward incorporations SDLT will not be payable. A straightforward incorporation is one where the assets and undertaking of a club are transferred to a new company (specifically set up to carry on the club's business) and there is no chargeable consideration for such transfer. **Clubs will need to take advice from their own lawyers or tax advisers as to whether this analysis will be correct in their particular case.**

By way of example only, there could be chargeable consideration if the new company assumes debt owed by the club, if debt owed by the club is satisfied or released (such as where the new company pays off an amount owed by the club) or if the transfer is made in satisfaction of a debt owed to the new company. Relevant debt for this purpose includes, but is not limited to, debt secured on the land in question.

3. Our view (supported by advice previously obtained from leading tax counsel) is that, as long as no amount of debt falls to be treated as chargeable consideration for the transfer (see above) and provided that the club makes the transfer as part of a distribution of its assets, an SDLT charge should not arise, on the basis that there would be no chargeable consideration for the transfer and the deemed market value rule would not apply.
4. The strict legal analysis is as follows:
 - 4.1 The transfer of the property will be within the scope of SDLT (Finance Act 2003, Section 42(1)).
 - 4.2 Normal reconstruction relief is not available as it only applies to companies with share capital.
 - 4.3 Absent that relief, the issue is whether the chargeable consideration will be deemed to be the market value of the property under Finance Act 2003, Section 53(1) ("**the deemed market value rule**").
 - 4.4 Under Section 53(1) the chargeable consideration is deemed to be not less than the market value of the land where the purchaser is a company and:
 - (1) the vendor is connected with the purchaser; or
 - (2) some or all of the consideration for the transaction consists of the issue or transfer of shares in the company with which the vendor is connected.
 - 4.5 For the purposes of 53(1) "**company**" is specifically defined to mean any body corporate (which includes a company limited by guarantee) and in the case of a club incorporating the vendor and purchaser will be respectively the club and the new company. Those parties will be connected by virtue of their same membership, so on the face of it the rule applies.

- 4.6 However, the deemed market value rule in Section 53(1) is subject to the exceptions specified in Section 54 and for the purposes of the incorporation of a club the relevant exception is:

"(4)... (a) the vendor is a company and the transaction is or is part of a distribution of the assets of that company (whether or not in the connection of its winding up); and

(b) it is not the case that:

(i) the subject matter of the transaction; or

(ii) an interest from which that interest is derived,

has within the period of three years immediately preceding the effective date of the transaction, been the subject of a transaction in respect of which group relief was claimed by the vendor."

- 4.7 The definition of "**company**" for the purposes of this exception is that used in Finance Act 2003 Section 100(1) which means any body corporate or unincorporated association. This ensures the club is capable of claiming the exception. Provided that the club makes the transfer as "a distribution of the assets of the company" paragraph (a) of Section 54(4) will be met.

- 4.8 Paragraph (b) of Section 54(4) is satisfied since an unincorporated association cannot benefit from the relevant group relief provisions.

- 4.9 As such, we consider that it is clear that where the transferor is an unincorporated association, for the purposes of s.54 of the FA 2003 (as distinct from s.53) it will be treated as a "**company**" and so take the benefit of the exception to the deemed market value rule.

5. It is of course worth remembering that if the new company is taking on liabilities which would amount to chargeable consideration (most likely a mortgage but see 2 above) then SDLT would be payable if the relevant SDLT threshold is exceeded.

Further advice

This publication is a general summary. It should not replace legal advice tailored to your club's specific circumstances. Please note the importance of seeking legal and tax advice when deciding how best to use the template documents for incorporation.

Guidance prepared by Farrer & Co LLP (August 2014).