HMRC - STSM021170 - Stamp Duty: Transfer In Contemplation Of A Sale

These instruments are dealt with under the provisions of FA65/S90. This states that a transfer which is not a conveyance on sale, but which was executed in contemplation of a sale (i.e. before a contract for the sale is made) is chargeable with Stamp Duty (SD) as if it were a conveyance on sale for a consideration equal to the value of the property transferred. A document must be adjudicated to be duly stamped under Section 90.

The section prevented avoidance which had become prevalent following the decision of the House of Lords that a transfer of shares to a company which held an outstanding option to purchase, before exercise of that option, was not chargeable to duty (William Cory & Son Ltd v IRC [1965] 1 All ER 917).

If a document is stamped under Section 90 but there is no sale, and the property is transferred back to the original owner (or to his representative on death or bankruptcy) the SD is repayable. If there is a sale but for a price less than the value on which duty was paid, the excess SD is repayable. In each case a claim must be made within 2 years of the date of the original transfer.

Where a document transfers other property in addition to property transferred in contemplation of a sale then it is charged with SD on the property transferred in contemplation of a sale and on the other property.

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