[2012] UKUT 277 (TCC)
Appeal number: FTC/50/2011

STAMP DUTY LAND TAX – Charities and Minister of the Crown relief – whether reliefs apply to interest in land acquired by a charity or Minister of the Crown as a tenant in common pursuant to a purchase made through a bare trustee on behalf of the charity or Minister and other non- charitable or Crown joint owners – No FA2003 sections 42 to 44,48 ,49,55, 75A, 76,77,85,103,107,117 and Schedules 8 and 16

UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)

(1) THE POLLEN ESTATE TRUSTEE COMPANY LIMITED

Appellants

(2) KING'S COLLEGE LONDON

- and -

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

TRIBUNAL: **The President,**
The Hon. Mr Justice Warren
Judge Timothy Herrington

Sitting in public in London on 26 and 27 March 2012

Jonathan Peacock QC, instructed by Eversheds LLP, for the first Appellant
Andrew Hitchmough and Zizhen Yang, instructed by Mills & Reeve LLP, for the second Appellant

Amanda Tipples QC, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

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1. DECISION

Introduction

1. This is an appeal against decisions made by the Respondents ("HMRC") to deny partial relief from stamp duty land tax ("SDLT") claimed by the Appellants in respect of various property acquisitions. The relief had been claimed on the basis that the beneficial interest in the properties concerned was owned jointly (as tenants in common) by persons, one or more of which were either a charity or a minister of the Crown and one or more others who did not fall into either of these categories and relief should therefore be allowed in respect of the interests attributable to the charities or Minister of Crown concerned.

2. The first Appellant, The Pollen Estate Trust Company Limited, ("PETCL") appealed to the First-tier Tax Tribunal ("the Tribunal") against the decision made by HMRC in its Closure Notice dated 16 February 2010 issued under paragraph 23 of schedule 10 to the Finance Act 2003 ("FA 2003") following the enquiries HMRC had made into the land transaction returns made by PETCL in respect of the acquisition of four properties in London. The decision was to refuse PETCL's claim for repayment of a proportion of the SDLT which PETCL had already paid in respect of these acquisitions. The basis of the claim for repayment was that as PETCL was acting as bare trustee for the beneficiaries of The Pollen Estate Trust ("The Pollen Estate") in making those acquisitions and since two of those beneficiaries are UK registered charities, partial relief should be allowed under schedule 8 to the FA 2003 in respect of the 74.335301% proportion of the properties attributable to those charitable beneficiaries.

3. PETCL had also claimed that since one of the beneficiaries is Greenwich Hospital, whose assets are held by the Secretary of State for Defence in his capacity as trustee for the Queen holding all the land and property for the exclusive benefit of Greenwich Hospital, then the Minister of the Crown exemption should apply under section 107 of the FA 2003 in respect of the proportion of the properties attributable to Greenwich Hospital.

4. HMRC had refused the claim as their view was that relief from SDLT is only available in the case of joint purchasers where all of the joint purchasers are entitled to the relief; their view was that by virtue of paragraph 3(1) to schedule 16 to the FA 2003 where a land transaction involves a number of persons acquiring a property through a bare trust the purchasers are treated as joint purchasers and the transaction is taxed as a single land transaction.

5. The second Appellant ("KCL") appealed to the Tribunal against the decision made by HMRC in its Closure Notice dated 28 September 2006 following enquiries HMRC had made into the land transaction return made by KCL in respect of the acquisition that a Professor Trembath, one of KCL's senior academic employees, had made of a property in London. The decision was to refuse KCL's claim for charities relief on a portion of the purchase price of the property. The basis of the claim for relief was that as Professor Trembath was acting as bare trustee for himself and KCL in making that acquisition and

KCL was a UK registered charity, partial relief should be allowed under schedule 8 to the FA 2003 in respect of the 46.3% proportion of the property attributable to KCL.

6. HMRC refused the claim on the basis of arguments similar to those made in respect of PETCL's appeal, as described in paragraph 4 above.

7. KCL's appeal was heard in the Tribunal on 16 and 17 February 2011. The decision on that appeal was released on 12 May 2011 but on 22 July 2011 Judge Bishopp, President of the First–tier Tribunal, Tax Chamber set the decision aside in its entirety in accordance with rule 38(1) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and directed that the appeal be re-heard. Judge Bishopp also directed that KCL's appeal and that of PETCL henceforth proceed and be heard together. In addition, with the agreement of the parties and with the concurrence of the President of the Tax and Chancery Chamber of the Upper Tribunal, Judge Bishopp transferred the appeals to be heard in this Chamber as first instance hearings under rule 28 of those rules.

The Facts

8. There is no dispute between the parties on the relevant facts. In relation to PETCL's appeal there is a statement of agreed facts and other background material submitted to us from which we find as follows:

> (1) The Pollen Estate is a trust for sale established under the Will and Codicils of the Reverend George Pollen who died on 27 March 1812 and a Conditional Deed of Family Arrangement dated 17 August 1966 (as amended by Order of the Chancery Division of the High Court on 17 June 1968 and on 23 July 2002).
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> (2) PETCL is the current trustee of The Pollen Estate.
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> (3) The present beneficiaries, we are told, amount to a little over 100 in number, being the successors of the Reverend Pollen's children and grandchildren and who acquired their interest in The Pollen Estate either by inheritance, by gift or by purchase (the shares in The Pollen Estate being freely alienable).
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> (4) The present beneficiaries include the Church Commissioners for England ("the Commissioners"), as to a 64.109601% share, and the Secretary of State for Defence, Greenwich Hospital ("the Hospital") as to a 10.2257% share.
>
> (5) The Commissioners are a charity. The Hospital is a Crown charity with its own governing Charter and statutes. The Hospital has its own independent identity under the Charter and statutes but beyond that does not have its own legal personality. Contracts, other legal documents and proceedings relating to Greenwich Hospital are entered into by the Secretary of State for Defence acting in his capacity as the sole trustee of the Hospital. In accordance with the Defence (Transfer of Functions) Act 1964 and the Greenwich Hospital Act 1865, the Secretary of State for Defence holds all the

land and property assets of the Hospital and they are vested in him in trust for the Queen for the exclusive benefit of the Hospital. The Hospital is, it is accepted by HMRC, both a charity and eligible for relief from SDLT under section 107 FA 2003.

(6) The Pollen Estate comprises a large holding of commercial property in the West End of London. Properties are from time to time bought and sold and between December 2006 and June 2008 PETCL, in its capacity as trustee of The Pollen Estate acquired four properties ("the PE Properties") in respect of which it filed land transaction returns and paid SDLT in full as if no reliefs applied. Each return disclosed that there was only one purchaser, namely PETCL.

(7) During 2008 and in January 2009 PETCL submitted claims for relief from SDLT in the form of an amendment to the relevant land transaction returns on the basis that charities relief should apply to the 74.335301% proportion of the properties beneficially owned by the Commissioners and the Secretary of State for Defence on behalf of the Hospital and the Crown exemption should apply in addition to charities relief in respect of the Hospital's share. Accordingly, PETCL sought repayment of the SDLT that had been paid and which was attributable to the Commissioners' and the Hospital's shares.

(8) On 16 February 2010 HMRC issued the Closure Notice referred to in paragraph 2 above and on 4 March 2010 PETCL gave notice of appeal to the Tribunal against the Closure Notice.

9. In relation to the KCL appeal we find from the material submitted to us as follows:

(1) On 16 February 2006 Professor Trembath acquired a leasehold interest in a flat ("the Lease") in South East London for a consideration of £378,000 ("the Purchase Price"). He was subsequently registered at HM Land Registry as the proprietor of the title absolute to the Lease in consequence of this acquisition.

(2) KCL contributed £175,000 to the Purchase Price pursuant to a shared equity scheme under which the contribution was made in return for an equitable interest in the Lease evidenced through a declaration of trust.

(3) On 16 February 2006, a Declaration of Trust was made between KCL and Professor Trembath pursuant to which Professor Trembath agreed and declared that he held the Lease on trust for himself and KCL *"as tenants in common"* in the following shares:

(a) as to KCL 46.3%; and

(b) as to himself 53.7%.

(4) On 10 March 2006, KCL's solicitors submitted a land transaction return in respect of the purchase of the Lease, pursuant to which KCL claimed charities relief on the sum of £175,000 which it had contributed to the purchase price of the Lease and which identified two purchasers, namely KCL and Professor Trembath.

(5) On 28 September 2006 HMRC issued the Closure Notice referred to in paragraph 5 above, which stated that the land transaction return would be amended to remove the claim to charities relief. KCL wrote to appeal against this decision on 26 October 2006, but due to various administrative delays notice of appeal was not given to the Tribunal until 27 January 2010.

Relevant Law

10. Although we received some quite lengthy submissions about the property law relevant to the present case, we do not think we need to say much about this aspect. We will deal with this in more detail in paragraphs 21 to 28 below. For the moment we note two matters as follows.

11. First, the relevant acquisitions by PETCL and by Professor Trembath all post-dated the commencement of the Trusts of Land and Appointment of Trustees Act 1996 ("TLATA"). The freehold and leasehold properties concerned each became subject to a "trust for land" within the meaning of TLATA, since under section 1(2), that expression includes an express, implied, resulting or constructive trust of land, an expressly or impliedly created trust for sale of land and a bare trust.

12. Secondly, it is common ground between the parties that both PETCL and Professor Trembath acted as bare trustees in acquiring the relevant properties and that the underlying beneficial interests in the properties acquired were owned by the respective beneficiaries of the trusts concerned as tenants in common. The legal reason for this was that each beneficiary held an undivided share in land, that is a distinct share in the property concerned that had not yet been divided among the co-tenants. This distinct share arises by virtue of the provisions of the relevant trust instrument which sets out the percentage share in the trust property attributable to each beneficiary, and is in contrast to a joint tenancy, whether subsisting at law or in equity, where the joint tenants are treated as a single owner (unless that joint tenancy is severed in accordance with section 36 of the Law of Property Act 1925 ("LPA"). The undivided share held by each beneficiary will itself be regarded as land: see section 205(1) (ix) of the LPA which was amended by TLATA to remove the exclusion of an undivided share in land from the scope of that definition.

13. The FA 2003 contains all the statutory provisions relating to SDLT which are relevant to this appeal. All statutory references below, unless indicated otherwise, are to the FA 2003. All the provisions of the FA 2003 to which we refer are set out in the Appendix to this Decision.

Issue to be determined

14. Put simply, the issue in these appeals is whether relief from SDLT is available to a charity or a Minister of the Crown in relation to the acquisition of a plot of land where the relevant purchaser acquires less than a 100% interest in the plot of land in question.

15. The Appellants say that relief is available in these circumstances for the following reasons:

(1) The relevant trustee (PETCL in the case of the PE Properties and Professor Trembath in the case of the Lease) acquired the property concerned as bare trustee for the beneficiaries concerned, including in the case of The Pollen Estate, the Church Commissioners and the Hospital, and in the case of the Lease, KCL. Such purchases constitute the acquisition of the beneficial interest in the property concerned by all the relevant beneficiaries as tenants in common. This is common ground between the parties.

(2) In the light of the above each of the Church Commissioners and the Hospital acquired an undivided share in the PE Properties and KCL acquired an undivided share in the Lease, which undivided share in each case constitutes for each of those beneficiaries an undivided share in land.

(3) Following on from the above, each of the Church Commissioners and the Hospital, in the case of the PE Properties, and KCL, in the case of the Lease, acquired a separate "chargeable interest" as defined in section 48 such that each was a party to a separate "land transaction" within section 43 and each was a separate "purchaser" for the purposes of SDLT by virtue of sections 43(4) and (6). As the relevant trustee acquired the interests concerned as bare trustee, paragraph 3(1) of schedule 16 applies as if the relevant beneficiary's interest were vested in, and the acts of the relevant trustee in relation to it, were the acts of the beneficiary concerned, making the relevant beneficiary the "purchaser" in relation to the corresponding land transaction.

(4) Each of the Church Commissioners and the Hospital, in relation to the PE Properties, and KCL, in relation to the Lease, was liable, on the face of it, to SDLT by virtue of section 85 as a purchaser but only to the extent that their particular transaction was a chargeable transaction and not able to benefit from a relief. Given their status as charities and (as regards the Hospital) also a Crown body, relief from SDLT in respect of each transaction is available under schedule 8 and (as regards the Hospital) section 107. Accordingly, each of the Church Commissioners and the Hospital, in the case of the PE Properties, and KCL, in the case of the Lease, should be taxable (or not) by reference to the interest that each acquires and thus no SDLT is due as regards the interests of the Church Commissioners and the Hospital in the PE Properties or as regards the interest of KCL in the Lease.

(5) Such a construction of the legislation gives a proper effect to the purpose of Parliament in exempting charities and Crown bodies by ensuring that the relief is available both where a charity (say) acquires a 100% interest and also where it acquires a 99% interest in a property, SDLT being due in the normal way on the 1%.

16. HMRC say that relief is not available for the following reasons:

(1) In relation to each of the PE Properties one "chargeable interest" was acquired, namely an estate in land subsisting in equity, not a number of purchases of separate chargeable interests. In respect of three of those properties the estate in land acquired was an estate in fee simple absolute and in respect of the other property the estate in land acquired was a term of years absolute. In relation to the Lease, one chargeable interest was also acquired, namely an estate in land subsisting in equity which in that case was a term of years absolute.

(2) The effect of section 43(6) is that the "subject matter" or "main subject matter of the land transaction" in relation to the properties which are the subject of these appeals is the relevant estate in land subsisting in equity and an undivided share which exists in relation to the estate in question is an "interest or right appurtenant or pertaining it that is acquired with it".

(3) The effect of section 43(4) and paragraph 3(1) of schedule 16 is that in relation to each purchase there are joint purchasers of the estate of land in question, namely the beneficiaries of the relevant trust who have acquired the estate subsisting in equity as tenants in common.

(4) As there are joint purchasers, section 103 applies so that their obligations under the FA 2003 in relation to the transaction concerned is a joint obligation and a single land transaction return is required. On the Appellants' construction multiple returns would be required and the provisions of section 103 would be rendered otiose.

(5) Schedule 8 can only apply if the purchaser in relation to the transaction was a charity. In relation to the transactions which are the subject of these appeals that is not the case, because the purchaser of the relevant estate in land subsisting in equity was, in the case of the PE Properties, two charities (the Church Commissioners and the Hospital) *and* the other beneficiaries and, in the case of the Lease, one charity (KCL) *and* Professor Trembath. Schedule 8 can only apply if the charity is the only purchaser or all the joint purchasers are charities. That same analysis applies in respect of the Crown exemption in section 107.

Discussion

17. We start our discussion with two preliminary matters. The first is to say something about policy. It is hardly necessary to observe that Parliament clearly intended to provide relief from SDLT in at least some cases where either a charity or a government entity is involved in the land transaction concerned. It is clear that an outright purchase of land by a charity or a Minister of the Crown will attract exemption. It is also clear that the purchase of an existing undivided share in land

will attract exemption. Similarly, the grant of a lease to a charity or a Minister of the Crown will attract exemption, as will the acquisition of an existing undivided share in a lease by such a person. That might be thought to lend some support to the view that Parliament intended there to be an exemption in relation to a transaction whenever a charity or Minister of the Crown obtains an interest in land as a result of the transaction.

18. Further support for that view is found in the charity relief itself. The first condition for obtaining relief is found in paragraph 1(2) of schedule 8 which requires the property acquired to be held for qualifying charitable purposes namely for use in furtherance of the charity's purposes or as an investment. But paragraph 3 qualifies that requirement by providing for exemption (until a disqualifying event) where the purchaser intends to hold "the greater part of the subject-matter of the transaction for qualifying purposes". Accordingly, if a charity acquires a property and uses, let us say, 80% of it in the furtherance of its charitable purposes, relief will be obtained in relation to the acquisition of the whole property. Why, it is asked, should not relief, at least as to 80%, be available if the charity acquires 80% of the property and a third party (non-charitable) acquires the other 20%? We return to this question in paragraph 54 below.

19. HMRC contends, however, that where there is a joint purchase by a charity and a non-charity, exemption is not available even in relation to the charity's share. Now, that may be what the legislation, on its true construction provides which is the matter for our decision. We asked Miss Tipples what policy reason there might be for distinguishing the acquisition of an existing undivided share by a charity from the acquisition of an undivided share as the result of a joint purchase with a non-charity. After considering the point with her clients overnight she gave two reasons. The first was that was what the position was in relation to stamp duty. We do not see that as a satisfactory answer at all: SDLT is an entirely new tax invented to replace stamp duty because of the unsatisfactory nature of that tax. It is clearly not the case that the new tax carried with it any of the intellectual or other baggage of the old tax. The second reason given was that there was a policy concern that if relief was available where a charity contributed to the purchase price of a property that could lead to avoidance or abuse, for example the charity's contribution could result in the remainder of the purchase falling into a lower tax band. We bear that in mind but that policy is not clear from the wording of the legislation.

20. We therefore approach the question of construction of the legislation on the footing that there was no policy of any sort which would have led Parliament deliberately to exclude exemption in the cases under appeal.

21. The next preliminary matter relates to the property aspects of the case. In the case of the Pollen Estate, PETCL purchased three freehold and one leasehold property and in the case of KCL, Professor Trembath purchased an existing leasehold. As we mentioned in paragraph 11 above, the relevant transfers and assignments of the PE Properties and the Lease all post-dated the commencement of the TLATA. The PE Properties and the Lease became subject to a trust of land within the provisions of that

Act. So far as concerns the PE Properties, these were, so far as we are aware, all acquired by way of investment and not for the occupation of any of the beneficiaries of the Pollen Estate.

22. So far as concerns the Lease, the property concerned was acquired as a home for Professor Trembath. The terms of the Declaration of Trust dated 16 February 2006 spell out in some detail the respective rights and obligations of KCL and Professor Trembath. The following are of note:

(1) Clause 4: this provides that the power of sale of the property may only be exercised if Professor Trembath and KCL give their consent; or if Professor Trembath wishes to sell (in which case, certain mechanics set out in Schedule 4 are to be observed); or if KCL requires in certain defined circumstances (for instance following Professor Trembath ceasing to employed by KCL and the property remaining unsold).

(2) Clause 5: this deals with the division of the proceeds of any sale with different divisions being applicable at different times and in varying circumstances. The detail does not matter. It has not been suggested that the resulting variation in the respective shares of Professor Trembath and KCL from their original shares means that they are not in fact entitled as beneficial tenants in common and that there is in fact a settlement. We do not think it likely that there would be anything in such an argument and we do not consider it further.

(3) Clause 6: this provides for Professor Trembath to have the exclusive right to occupy the property as his primary or secondary residence. This right reflects the provisions of section 12 TLATA.

23. The first point to make is that, in our view, nothing turns on whether or when a purchaser becomes registered as proprietor in the case of registered land. What is important, it seems to us, is the transfer of a beneficial interest. This is obviously so in the case of the transfer of an undivided share in land: the beneficial owner transfers his undivided share and the legal estate remains unaffected (unless there is a contemporaneous change in the trusteeship of that legal estate). It would be a curious asymmetry if the position were any different where the entire beneficial interest is transferred. Suppose, for example, that the legal estate is vested in trustees, Ts, with the entire beneficial interest having become vested in A (for instance, where one of two co-owners inherits the share of the other co-owner). A could transfer his 100% beneficial interest to a third person, B, for full consideration without involving Ts at all, with the legal estate subsequently being transferred to B. There can be no doubt, we consider, that there is a chargeable transaction within section 49 when A transfers the entire beneficial interest to B. The bare legal estate is, it is true, a chargeable interest within the definition in section 48; but its subsequent transfer by Ts to B is of no consequence since it will be for no consideration and thus not give rise to any charge being of no value independently of the beneficial interest: see paragraph 1 of schedule 3.

24. In the present cases, of course, the transfers of the PE Properties to PECTL and of the Lease to Professor Trembath were the documents which resulted in the transfer of the relevant legal estates, with PETCL and Professor Trembath in due course being registered as proprietors. There can be no doubt that the transfers, coupled with payment in full to the relevant vendors, were effective to pass 100% of the beneficial interest in the PE Properties and the Lease.

25. But to what entities were those beneficial interests transferred? On one view, PETCL obtained, for SDLT purposes, 100% of the beneficial interest in the PE Properties and Professor Trembath acquired 100% of the beneficial interest in the Lease and it is in relation to those acquisitions that SDLT falls to be assessed. But on another view, the relevant acquisition, for SDLT purposes, was by the beneficiaries of the Pollen Estate in relation to the PE Properties, and by KCL and Professor Trembath in relation the Lease. The reasoning is that PETCL acquired the PE Properties as trustee and under the trusts on which it held them, the beneficial interest was held, from the moment of its acquisition, by it on trust, indeed a bare trust, for the beneficiaries of the Pollen Estate in the relevant undivided shares. Similarly, Professor Trembath held the Lease, from the moment of its acquisition, on trust for himself and KCL.

26. There is perhaps some scope for argument in the case of the Lease that Professor Trembath acquired 100% of the beneficial interest for himself and only transferred to KCL its share by a separate deed of trust. We do not think that there is anything in that argument. This is because (a) it was always the intention that Professor Trembath would acquire the Lease and hold it in undivided shares for himself and KCL (b) KCL in fact provided its share of the purchase price to enable completion to be effected and (c) the deed of trust was executed on the same day as the contract and the transfer, with the money being transferred to the vendor's solicitors.

27. On this second way of viewing matters, the substance of each acquisition was that the beneficial interests passed from the vendors of each of the PE Properties to the beneficiaries of the Pollen Estate and from the vendor of the Lease to KCL and Professor Trembath. The acquisitions by PETCL and Professor Trembath are not, however, to be ignored; rather, it is to be recognised that PETCL and Professor Trembath did not hold the beneficial interest in each case for themselves but held it upon trust for the relevant beneficiaries.

28. Which of these two views fits better in the context of the SDLT legislation? Before addressing that question we make the following observations:

> (1) The acquisition of a "major interest in land" (see section 117) is a "notifiable transaction" (see section 77) and in relation to every notifiable transaction there is a duty to deliver a land transaction return under section 76. The "major interests" with which we are concerned are the relevant estates in the PE Properties and the Lease, that is to say estates in fee simple absolute and terms of years absolute. These are the only legal estates capable of subsisting

and these are the estates obtained, once registration in the Land Registry had been effected, by PETCL and Professor Trembath.

(2) The beneficiaries under the Pollen Estate in the case of the PE Properties and KCL and Professor Trembath in the case of the Lease are persons "jointly entitled" within the definition contained in section 121 being beneficially entitled as tenants in common. They are, no doubt, separately entitled to their own undivided shares but that does not detract from the fact that they are jointly entitled to the PE Properties or the Lease (as the case may be).

(3) We are clearly concerned only with "bare trusts" and not with "settlements" as defined in Schedule 16. The beneficiaries of the Pollen Estate in the case of the PE Properties and KCL and Professor Trembath in the case of the Lease are jointly absolutely entitled as against the relevant trustee (PETCL and Professor Trembath). For what is worth, a "bare trust" includes the case where a person holds property as nominee for another.

(4) The expression "chargeable interest" is defined in section 48. It includes "an estate, interest, right or power in or over land in the United Kingdom" but excludes an exempt interest. Depending on the context, it can therefore include a major interest in land, 100% of the beneficial interest in land, the legal estate in land (as held by a trustee of a settlement) viewed separately from the beneficial interest and an undivided share in land. A particular commercial deal relating to property (we avoid the use of the word "transaction" at this juncture to avoid confusion with the "chargeable transaction" - or perhaps "chargeable transactions" - which is what has to be identified for the purposes of SDLT in relation to the commercial deal) may result in different interests passing in different direction. Thus, consider as an example the purchase from a land-owner, V, of an investment property by trustees, Ts, on trust for a number of individual beneficiaries as tenants in common (it does not matter for the purposes of the example whether Ts are themselves beneficiaries). Ts acquire a major interest in the property and each of the beneficiaries acquires an undivided share each of which falls within the definition of "chargeable interest".

(5) A "land transaction" within section 43 means "any acquisition of a chargeable interest". In the example we have just given, Ts acquire a chargeable interest which falls within the definition of that phrase as a result of the commercial deal so that the acquisition would, *prima facie* at least, appear to be a "land transaction". But equally, the beneficiaries each acquire interests which also fall within the definition of chargeable interest. This too would appear, *prima facie* again, to be a "land transaction" with an "acquisition" by each beneficiary of a "chargeable interest".

(6) It cannot, however, be right that all these acquisitions are subject to SDLT. We will need to consider, in due course, how such a result is to be avoided which will, as we see it, involve identifying the relevant "land

transaction" in relation to such an example, as we discuss in paragraphs 32 to 39 below.

(7) References in the legislation to "purchaser" and "vendor" in relation to a land transaction are to the persons acquiring and the person disposing of the subject-matter of the transaction. This applies even if there is no consideration given for the transaction. But a person who is a party to the transaction is to be treated as a purchaser even in the absence of consideration under section 43(5). In the example, V is the vendor and Ts are the purchasers in relation to the acquisition of the major interest (if that is the relevant land transaction) and V, again, is the vendor and the beneficiaries are the purchasers in relation to their individual acquisitions of undivided shares (if those are the relevant land transactions).

29. With those observations in mind, we turn to the statutory provisions. We find it helpful to consider how they operate by examining, first, acquisitions by tenants in common involving no issue of charitable relief before turning to consider the case the position where one of those tenants in common is a charity.

30. Consider the case of a conventional acquisition of a house, H, as a residence for themselves by four friends, A, B, C and D none of whom is a connected person. They each contribute £200,000 to a total purchase price of £800,000. H is transferred to them all and they are all registered as proprietors as HM Land Registry. They hold H as beneficial tenants in common.

31. How is this transaction to be treated for the purposes of SDLT? HMRC would say that there is a single "land transaction" consisting of the acquisition of H by four joint purchasers of the whole legal and beneficial interest. PETCL and KCL would say that there are four separate land transactions under which the four beneficiaries are separate purchasers of separate chargeable interests, namely their respective beneficial interests as tenants in common.

32. These contrasting positions turn on competing analyses of the statutory provisions, in particular of section 103, headed "Joint purchasers". Section 103(1) provides that the section applies to a land transaction where two or more purchasers who are or will be jointly entitled to the interest acquired. We can apply HMRC's approach to the example as follows:

(1) As we have pointed out already, "jointly entitled" is defined in section 121 as meaning beneficially entitled as joint tenants or tenants in common. Since A, B, C and D are, according to this definition, jointly entitled, HMRC would says that the natural reading of section 103 is to identify the "land transaction" as the single acquisition of the entirety of H by persons jointly entitled. Those persons together are the purchasers of H. This land transaction is the relevant "chargeable transaction" under section 49(1).

(2) Consistently with that, a sensible application of section 103(2) is available. Thus paragraph (a) results in any obligations (in particular the obligation to pay SDLT) of "the purchaser" being an obligation of "the purchasers jointly". The use of the plural in that last phrase indicates that purchasers (as beneficial joint tenants or tenants in common) are together the persons to which the word "purchaser" in other provisions is referring. Paragraph (b) provides that anything required or authorised to be done in relation to "the purchaser" must be done by or in relation to "all of them" (*ie* the purchasers referred to in paragraph (a)). And paragraph (c) provides that any liability of the "purchaser" in other provisions is a joint and several liability of "the purchasers" (*ie* again all of them).

(3) Section 76 imposes an obligation on a purchaser, in the case of a notifiable transaction, to deliver a return. The acquisition of H by A, B, C and D jointly is the acquisition of a major interest. Although each of them is responsible for making a return, there is no multiplicity of returns, since section 103(3) provides that a single land transaction return is required.

(4) This approach results in a principled result as to the amount of SDLT to be paid. Since there is, on any view, a disposal by the vendor of the whole of H to persons who become absolutely entitled between them as tenants in common, one would expect the amount to be based on an acquisition of the whole. Thus under section 55, tax is charged in respect of the consideration for the transaction, *ie* £800,000 in the example. Since the consideration exceeds £500,000, tax is charged at 4% in accordance with Table B in sub-section (2). This is what Parliament intended, rather than to treat the situation as involving four separate transactions of £200,000, with a tax rate of 1% on each.

33. In contrast, we can apply PETCL's and KCL's approach to the example as follows:

(1) As a result of the transaction, each of A, B, C and D acquire a chargeable interest, namely an undivided share in H. Accordingly, there are four separate "land transactions" within section 43(1) each of which is a separate chargeable transaction under section 49(1). The wide meaning given to "acquisition" by section 43(2) includes each of these four separate land transactions.

(2) Each of A, B, C and D is a "purchaser" since each has given consideration for his acquisition.

(3) The amount of SDLT due under section 55 is calculated in relation to each chargeable transaction separately. Since the consideration given by each purchaser does not exceed £200,000, the rate on each chargeable transaction is 1% in accordance with Table A. The transactions are not linked transactions under section 108 since the purchasers are not connected.

(4) It is said, by Mr Hitchmough for KCL at least, that section 103 applies differently in relation to beneficial joint tenants and beneficial tenants in common. There is, of course, a difference between joint tenancy and tenancy in common as he points out. Thus the *jus accrescendi* is the defining characteristic of a joint tenancy; the rights of a joint tenant do not pass under his will. In contrast, tenants in common have quite separate interests which they are free to dispose of as they wish, including by will: tenants in common do not own distinct parcels of land, but they do own distinct shares in an undivided whole.

(5) Section 6(c) Interpretation Act 1978 provides that in any Act, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular. Accordingly, it is said by Mr Hitchmough that if what he refers to as an informed interpretation is given to section 103 – applying section 6 Interpretation Act 1978 and reading the statutory definitions of "land transaction" in section 43(1) and "jointly entitled" in section 121 – it is to be read as applying in the case of "the acquisition of one or more interests in land where there are two or more purchasers who are or will be entitled as either joint tenants of tenants in common to the interest or interests acquired".

(6) Mr Peacock, for PETCL, addressed section 103 rather differently. He seems to perceive section 103 as essentially an administrative provision which cannot alter the scope of the charging provisions themselves. We say that because, in paragraph 32 his skeleton argument, he says this:

> "Insofar as reliance is placed by HMRC on the administrative provisions dealing with the collection of SDLT, such provisions cannot alter the scope of the charging provisions themselves. In particular, HMRC point ….. to the terms of s.103 FA 2003".

We will come to the purely administrative provisions in due course, commenting only at this stage that whilst it is true that administrative provisions cannot alter the scope of the charging provisions, the contents of the administrative provisions may have a bearing on the true construction of the charging provisions. As to section 103 itself we turn to that almost immediately at paragraph 34 below.

(7) Mr Peacock would say that, having arrived at the true construction of the charging provisions, namely that there are four separate chargeable interests and four separate chargeable transactions, section 103 cannot alter the result. He draws no distinction between a joint tenancy and a tenancy in common. Thus, as we have already noted, section 103(1) applies where there are two or more purchasers who are jointly entitled, section 103(2) makes the purchasers jointly and severally liable for such SDLT as is due and section 103(3) requires a single return signed by all of the purchasers. But, according to him, neither the fact that the purchasers are jointly and severally liable nor the administrative requirement for a joint return determines how much SDLT is due or how it is to be calculated.

34. In considering those different approaches, we observe that the legislation as a whole is directed at the how SDLT is to be charged in relation to a chargeable transaction and is drafted by reference to a single transaction rather than a multiplicity of transactions. Thus, section 55 provides for the amount of tax which is chargeable in respect of a chargeable transaction, the focus being on a single transaction. It would make no sense to attempt to apply section 6 Interpretation Act 1978 to that provision since the tax is determined by reference to a particular transaction not to a group or series of transactions. Similarly, section 76 provides that there is to be a return in "the case of every notifiable transaction"; each separate transaction is to be subject to a separate return.

35. Section 103 can be seen as recognising the need for the situation of multiple purchasers to be specifically addressed. It is not, *pace* Mr Peacock, an administrative provision or to be assimilated with such a provision. Like other provisions, it is, in our view, concerned with a single land transaction; but it is a land transaction with a particular characteristic namely one where there are two or more purchasers who are or will be jointly entitled. The reference to "a land transaction" is to a single land transaction and the reference to "the interest acquired" is to the (single) interest acquired as the result of that transaction. In the example, the relevant land transaction, on HMRC's case, is the acquisition by A, B, C and D of the entire beneficial interest in H and that is the interest within the meaning of section 103 which is acquired by them jointly. If it is correct to identify the land transaction in that way, it seems to us that the conclusion that the interest referred to in section 103(1) is the entire beneficial interest in H since that is the only interest which is acquired "jointly". The subsection cannot be referring to each undivided share being acquired by A, B, C and D, since each of them becomes entitled to his share and there is no interest to which they are jointly entitled.

36. On that approach, the general rules set out in section 103(2) apply. In the example, A, B, C and D are all purchasers. Under the general rules:

> (1) any obligation of the purchaser under Part 4 in relation to the acquisition of H is an obligation of A, B, C and D jointly but may be discharged by any of them,
>
> (2) anything required or authorised under Part 4 to be done in relation to the purchase must be done by or in relation to all of A, B, C and D, and
>
> (3) any liability of the purchaser under Part 4 in relation to the acquisition of H is a joint and several liability of A, B, C and D.

37. The result of both Mr Peacock's submissions and Mr Hitchmough's submissions, however, is that the relevant chargeable transactions are four separate acquisitions by each of A, B, C and D of their respective undivided shares. If that is correct, section 103 is not of relevance since none of them become jointly entitled to any interest with which the section is concerned. In that case, Mr Peacock does not need to make his

argument about how section 103 operates, and Mr Hitchmough does not need to rely on section 6 Interpretation Act 1978. Faced with the choice, in the example, between an analysis under which each of A, B, C and D acquires his interest as the result of a separate chargeable transaction with section 103 being of no relevance and one under which section 103 is given effect to according to its clear terms, we have no hesitation in preferring the latter and we therefore reject the approaches of Mr Hitchmough and Mr Peacock to the section. We do so for essentially these reasons:

(1) Section 103 was designed, we consider, to deal with the certain cases of multiple purchasers namely where those purchasers become jointly entitled to the interest acquired. The paradigm for the application of that provision is where two or more persons together contract with a vendor to buy a property and where, on completion, the property is conveyed to them to hold as beneficial tenants in common. If that is not a transaction within section 103 (*ie* a land transaction under which two or more person are or will be jointly entitled to the interest acquired) then, subject to two points to which we come almost immediately (see (4) to (7) below), it is difficult to see when the section could ever apply.

(2) Taking the example again, it is not possible to argue on the one hand that section 103 is applicable, for the purposes of the general rules set out in sub-section (2) to the acquisition of H because A, B, C and D become jointly entitled whilst, on the other hand, to argue that there are four separate land transactions for the purpose of the substantive charging provisions. This is because those general rules are precisely a reflection of what the charging provisions entail in the case of joint purchasers; the general rules would serve no purpose if the actual charge fell to be imposed separately from and inconsistently with those general rules.

(3) This result is not, as Mr Peacock would have it, to allow section 103 to alter the meaning of the charging provisions. Rather, it is an essential part of the architecture through which the scope of the charge is to be determined.

(4) The first of the points mentioned at the end of a. above is this. It might be possible to structure an acquisition from a vendor of a property by separate contract and assignments under which each intended tenant in common buys his share from the vendor independently of, but at the same time as, the other tenants in common. But that is not the present case and we do not need to address the issue whether such an artificial scheme would be effective.

(5) The second of those points is, in substance, the point made by Mr Hitchmough that there is a difference between an acquisition as joint tenants and an acquisition as tenants in common. He seemed inclined to accept that an acquisition by joint tenants would result in a single chargeable transaction because the joint tenants are in the position of a single owner of a single interest. Accordingly, he is able to give scope for the application of section 103, removing the force of the argument which we have set out in a. above.

(6) We do not consider that there is any force in the point. This is principally because section 103 uses the phrase "jointly entitled", a term which is expressly defined in section 121 as including persons entitled under either a joint tenancy or a tenancy in common. In our view, there is no reason, other than mere assertion of the conclusion which Mr Hitchmough seeks to establish, to treat a joint tenancy any differently from a tenancy in common in this context.

(7) In any case, the way in which Mr Hitchmough argues to his favoured conclusion in reliance on section 6 Interpretation Act 1978 is, we consider, unsustainable. His rewrite of section 103(1) to give effect to section 6 goes far beyond reading the singular as including the plural. Rather, his reading of his own rewrite substantially alters the sense of the provision by bringing about a disconnection between the land transaction concerned and the interest referred to. And if a rewrite simply reflects section 6 by adding plurals where one finds only the singular, (so that one would find "land transactions" in the plural and "interests acquired" in the plural), there still has to be found an interest to which persons are jointly entitled as a result of one of the land transactions concerned. Thus in the example it might be said that the section applies to "land transactions" in the plural *ie* four acquisitions by each of A, B, C and D. But even if that is done, it cannot be said that anyone becomes jointly entitled to any of the interests which are the subject matter of any of those separate land transactions.

38. Our clear conclusion in the example under consideration is that there is a single land transaction which falls within section 103, namely the acquisition of H by A, B, C and D. The general rules in sub-section (2) apply with the result that the four of them are together the purchaser for the purposes of Part 4 so far as concerns the imposition of obligations on a purchaser.

39. It follows from this analysis that applying section 43(6), the "subject matter" or "main subject matter of the land transaction" to the example under consideration is the relevant estate in land. That means that the "relevant land" for the purpose of the SDLT calculation to be performed under section 55(2) will, by virtue of section 55(3) be that estate, being "the land an interest in which is the main subject-matter of the transaction", and since that estate is a "major interest in land" within the definition of section 117, the transaction is a "notifiable transaction" within section 77 and there is a duty to deliver a land transaction return in respect of it under section 76. That would so even if the total consideration falls below the threshold of £125,000 above which the tax rate rises from 0% to 1%. Thus, if two individual buy a small flat for £125,000, there is an acquisition of a major interest and a return is required even though there is no tax to pay. The effect of PETCL's and KCL's analysis would be that there would be two separate land transactions neither of which concerned a "major interest in land" and neither of which fell within section 77(1)(b); accordingly, no return would be necessary under section 76. Faced with the choice of an analysis which gives no effect to section 76 in such a case and one under which it is given

effect to in clear terms, we choose the latter with the result that section 76 and section 103 operate together coherently and consistently.

40. We have not, in our analysis, addressed Schedule 16 (introduced by section 105). This deals with settlement and bare trusts. The present appeals are all concerned with bare trusts, that is say a trust under which property is held by a person as trustee for a person (or two or more persons) absolutely entitled as against the trustee. Returning to the example, there would be a bare trust if H had been conveyed to A and B to hold upon trust for themselves and C and D in equal shares. Ignoring the special case of the grant of a lease, paragraph 3(1) provides that, where a person acquires a chargeable interest as bare trustee, Part 4 applies "as if the interest were vested in, and the acts of the trustees in relation to it, were the acts of the person or persons for whom he is trustee". The effect of this is clear. Taking the example first, A and B acquire H as bare trustees so that Part 4 applies as if H were vested in A, B, C and D as tenants in common in equal shares. This means, in our view, that the acquisition is treated as one by A, B, C and D, the result being precisely the same as discussed in relation to the original example.

41. Similarly, Professor Trembath acquired the Lease as a bare trustee. The Lease is treated as vested in him and KCL as tenants in common in their respective shares and Part 4 applies as though the Lease were vested in them as tenants in common in those shares. So, too, with the Pollen Estate. PETCL is a bare trustee and the PE Properties are treated as vested in the beneficiaries of the Pollen Estate in the relevant undivided shares. Although, in the case of the Pollen Estate, the legal estate could not be vested in all of the beneficiaries since there are more than four of them, there is no reason why the beneficial interest should not be treated as vested in them all. The consequence for SDLT is that the acquisitions of the Lease and the PE Properties were acquisitions to which section 103 applied. In the case of the Lease, the relevant land transaction was the acquisition of the Lease where two persons (Professor Trembath and KCL) became jointly entitled to the interest acquired, that interest being the entirety of the Lease. Similarly, in the case of the PE Properties, the relevant land transactions were the acquisitions of each of those Properties where more than two persons (the beneficiaries of the Pollen Estate) became jointly entitled to 100% of the beneficial interest.

42. Charities relief is to be found in Schedule 8 (introduced by section 68). It provides, as already noted, that "a land transaction is exempt from charge if the purchaser is a charity" and certain conditions are met. Those conditions would, it is common ground, be met if the relevant land transaction is the acquisition by KCL and the charitable beneficiaries of the Pollen Estate, of their respective undivided shares.

43. Our analysis of the acquisition by tenants in common where no question of exemption arises, leads to the conclusion that the relevant land transaction for the purposes of SDLT is the acquisition of the entire property and not each separate acquisition of an undivided share by each tenant in common. It follows, we consider, that the relevant land transaction when it comes to applying the charity relief is also the acquisition of the entire property. We would reject any suggestion that, when it

comes to applying that relief, it is permissible to switch attention away from that land transaction and instead to focus on the separate acquisitions by the tenants in common of their undivided shares, in particular on the acquisition by the charity of its undivided share. In particular, we do not see how paragraph 1(1) of Schedule 8 could convert the land transaction which is, under our analysis, the relevant transaction (*ie* the acquisition of the entire beneficial interest by the tenants in common collectively) into separate land transactions and thus override the effect of section 103.

44. Nor do we consider that, by focusing on the identity of the "purchaser" in paragraph 1(1), it is possible to extend the exemption to the acquisition by a charity of an undivided share in the property concerned. To read "the purchaser is a charity" as including "the purchasers are charities" does not assist, because the purchasers, in the cases before us, are not all charities. It might be suggested that it should be read as "the purchasers include a charity" although that would, in our view, go beyond any process of construction. But even it could be done, there would then need to be a textual distortion of paragraph 1(2) which refers to "the subject matter of the transaction". The "transaction" can only be read as a reference to the land transaction referred to in paragraph 1(1) which, on our analysis can only be read as a reference to the acquisition of the relevant property and not as a reference to the separate undivided share in that property. Accordingly, references in paragraph 1(2) to "the subject-matter of the transaction" would have to be read as a reference to the charity's undivided share in that subject-matter.

45. In relation to the acquisition of the PE Properties, reliance is also placed in the exemption for acquisitions by a Minister of the Crown. The exemption is found in section 107(2) which opens with these words: "A land transaction under which the purchaser is any of the following is exempt from charge". In our view, as with the charity relief, the reference to a land transaction is a reference to each transaction by which 100% of the beneficial interest in the PE Properties was acquired by the beneficiaries of the Pollen Estate as tenants in common. Although the relevant Minister was one of the purchasers, the purchaser referred to in section 107(2) was not the Minister. It would be wrong to read the exemption as applying whenever the purchaser <u>included</u> a Minister: that would result in the transaction as a whole being exempt even though the Minister might take a small undivided share.

46. On the basis of the provisions which we have already referred to alone, we have formed the strong view that HMRC are correct in their construction of the legislation. Other arguments on each side have been presented to which we will now refer for completeness. The arguments on behalf of KCL and PETCL do not lead us seriously to doubt our conclusion.

47. The first point to mention is Mr Hitchmough's criticism of HMRC's approach to sections 43(4) and (6). Section 46(4) provides that references in Part 4 to "purchaser" and "vendor" in relation to a land transaction are to the persons acquiring and the person disposing of the subject-matter of the transaction: and that references in Part 4 to the subject-matter of a land transaction are to the chargeable interest acquired (referred to as "the main subject matter") together with any interest or right

appurtenant of pertaining to it that is acquired with it. HMRC's position appears to be that there must be a match between what the vendor is disposing of and what the purchaser is acquiring. As Mr Hitchmough puts it, HMRC say that the subject-matter of the land transaction is 100% of the property concerned (*ie* in the present cases, 100% of the beneficial interest in the PE Properties and in the Lease) from which, according to HMRC, it follows that what the purchaser acquires is also 100% of the relevant property. He says that this reading of the statute is wrong.

48. His argument is that the purpose of section 43(4) is to identify the purchaser and the vendor, an identification which is achieved by reference to the subject-matter of the transaction. The subject matter of the transaction is the chargeable interest acquired (see section 43(6)). The use of the word "acquired" should lead to an analysis which focuses on matters from the acquirer's perspective, something which is consistent with the obligation being on the acquirer to pay the tax. In the case of KCL, he therefore submits that two separate chargeable interests have been acquired, namely the separate undivided shares of KCL and Professor Trembath. In the context of the example we have used, he would say that each of A, B, C and D have acquired separate chargeable interests and each of them is a purchaser.

49. Mr Hitchmough points out, perfectly correctly, that Professor Trembath was and is a bare trustee of the Lease for himself and KCL so that the beneficial interest is treated as vested in them both and so that his acts in relation to it were the acts of them both. The consequence of that, however, is that one can effectively ignore the bare trusteeship: for SDLT purposes the position is as if Professor Trembath and KCL had acquired the Lease and had it vested in them together. That is the analysis which we have discussed above in relation to the example, concluding that there is no difference to be found between an acquisition by A, B, C and D together and an acquisition by A and B as trustee for all four of them.

50. If Mr Hitchmough is correct to identify the relevant land transactions and the separate acquisitions of undivided shares by each beneficiary, then of course all the consequences which he identifies do follow. But there are at least two difficulties which he has to face. The first is that the acquisition of the whole of the relevant property (the PE Properties in the case of PECTL, the Lease in the case of Professor Trembath and the house, H, in the case of the example) is itself a land transaction under which the relevant tenants in common together acquire the whole beneficial interest. The subject matter of that transaction is the entirety of the property concerned. That feature cannot simply be ignored. The second difficulty is the effect of section 103. We have already addressed section 103 at some length and rejected Mr Hitchmough's argument in relation to it. If we are right on that, the first difficulty does not arise as a separate problem. But we do say that even if the separate acquisitions of undivided shares (as the result of a transaction under which the whole beneficial interest is disposed of by a vendor) are separate chargeable interests within section 43(6), we do not see why that would result in the acquisition of the whole by tenants in common not remaining itself a land transaction in relation to which the tenants in common are, collectively, the purchaser.

51. At one stage, HMRC suggested that the transactions are to be analysed as the acquisition by PECTL and Professor Trembath of the whole beneficial interest followed after a scintilla by an acquisition of undivided shares by the beneficiaries. This point was not argued before us and we do not accept that analysis. The effect of paragraph 3(1) Schedule 16 is that the bare trusteeship in ignored. The position is the same as if the beneficiaries had taken immediate interests as tenants in common.

52. It might be said, against our approach, that it faces the same difficulty (in reverse) as the first difficulty we identified in paragraph 50 above facing Mr Hitchmough. Even if the relevant land transaction is the acquisition of the whole beneficial interest (by bare trustees or by beneficial tenants in common) the fact remains that each beneficial tenant in common ends up with his own undivided share which is itself a chargeable interest. He must therefore have "acquired" it; and it is his acquisition with which SDLT is concerned. But this, in our view, is to raise a false distinction between what it is that the tenants in common acquire collectively (the entire beneficial interest in the property) and what they acquire individually. The sum of the individual interests is precisely what they, collectively, acquire. The question is whether the relevant transaction for SDLT is the collective acquisition or the separate acquisitions. We consider that section 103 answers that question conclusively in favour of the former and we reject the suggestion that each tenant in common has acquired a separate interest pursuant to a separate chargeable transaction. There is a single land transaction under which the whole of the beneficial interest is acquired by a number of purchasers, the tenants in common, who are "jointly entitled" within section 103. Reading section 43(1) with section 103, the relevant land transaction is the acquisition of the interest which the persons jointly entitled acquire between them; and nothing in section 43(4) or (6) detracts from that conclusion.

53. It might be possible to read section 43(1) as defining a land transaction as "any acquisition of a chargeable interest or chargeable interests". But that, it seems to us, really takes the debate no further. Even on this reading there is a single land transaction and, accordingly, a single chargeable transaction: see section 49. The subject matter of that chargeable transaction remains the entirety of the beneficial interest and the liability for SDLT falls to be determined by reference to that chargeable transaction.

54. The second point to mention is one already made in paragraph 18 above, namely the argument based on paragraph 3 Schedule 8. Why, it is asked, should exemption be obtained where a charity acquires a property but uses only 80% for a qualifying purpose, but not be obtained when it acquires an 80% divided share in a property which it does use for a qualifying purpose? This does, at first sight, seem a little surprising; but even the approach which Mr Peacock and Mr Hitchmough urge us to adopt provides only a partial solution. This is because in the case where the charity acquires 100% but uses only 80%, relief is obtained in respect of the whole purchase price. In contrast, on their construction of the legislation, relief would only be obtained in relation to the 80% of the total purchase price albeit 100% of the charity's own contribution to the total purchase price. Related to this is the third point, namely the distinction between the acquisition by a charity of a subsisting undivided share in

a property, for instance as an investment falling within the first condition under paragraph 1(2)(b) Schedule 8 and the acquisition of an identical interest when it is part of a larger acquisition of the whole together with other tenants in common. It is hard to think of any rational reason for this latter distinction.

55. The fourth point is the impact, if any, of paragraph 4 Schedule 16 on the true construction of the statutory provisions which we have been examining. Paragraph 4 is dealing with the position of trustees of a settlement in contrast with the trustees of a bare trust. Where trustees of a settlement acquire a chargeable interest, they are to be treated for the purposes of Part 4, as it applies in relation to that acquisition, "as purchasers of the whole of the interest acquired (including the beneficial interest)". The draftsman considered it necessary to include the words "(including the beneficial interest)" presumably on the basis that otherwise it might be suggested that all the trustee obtained was a legal interest of little if any value and thus giving rise to no SDLT charge. In contrast, those words are not included in relation to a bare trust which suggests, therefore, that the trustees of a bare trust are not to be treated as if they had acquired the beneficial interest. Although this point has been raised before us, we do not think that it leads anywhere. So far as concerns a bare trust, the relevant property is treated as vested in the beneficiaries which is precisely where the beneficial interest resides anyway (in the cases before us as beneficial tenants in common). The bare trustees are not to be treated as purchasers of anything, let alone the beneficial interest.

56. The fifth point relates to anomalies. Mr Hitchmough identifies one which arises on HMRC's construction which he relies on to show that that construction is wrong. It relates to section 53. This section applies to deem market value to be given for a transaction in a case where the vendor is connected with the purchaser or where the whole or part of the consideration for the transaction consists of the issue or transfer of shares in a company with which the vendor is connected. This, as Mr Hitchmough says, is an anti-avoidance provision targeted at ensuring that the chargeable consideration for a transaction between a company purchaser and a vendor connected with it is not less than the market value of the subject matter of the transaction. The opening words of the section are "This section applies where the purchaser is a company", words similar to those introducing the charity relief, that is "A land transaction is exempt from charge if the purchaser is a charity". Mr Hitchmough says that if HMRC's approach is correct in relation to the charity relief, the same approach should be applied to section 53. On that basis, it would be easy to circumvent section 53 by arranging for the purchasers to include an individual as a joint purchaser along with the company, the individual taking a nominal share. The result would be that "the purchaser" within section 53 is not a company just as the "purchaser" within paragraph 1 Schedule 8 is not a charity. We should not be taken as accepting that this suggested anomaly exists. In the case of paragraph 1 Schedule 8, it is not possible to read the opening words as though they read "A land transaction is exempt from charge if the purchaser is or includes a charity…": the remaining provisions of paragraph 1 simply cannot be made to work given that the transaction referred to is the acquisition of 100% of the property by beneficial tenants in common. In contrast, perfectly good sense can be made of section 53 if it the opening words are read in this

way: "This section applies where the purchaser is or includes a company and..." Although Miss Tipples accepted that the word "purchaser" should be interpreted in the same way in each provision, we think that it ought to be open to HMRC in another case to make that argument and we cannot rule it out as obviously wrong. We proceed, however, in the present appeals on the footing that Mr Hitchmough is right about this anomaly.

57. There is one suggested anomaly in the other direction relied on by Miss Tipples. We can illustrate it by the example provided by Mr Hitchmough in his skeleton argument. A husband and wife purchase a residential property for £400,000 as beneficial tenants in common in equal shares. On KCL's analysis, there are two separate chargeable transactions each with a chargeable consideration of £200,000. However, since spouses are "connected" within the meaning of section 1122 Corporation Tax Act 2010, there are "linked transactions" for the purposes of section 108(1). Accordingly, SDLT is due on the aggregate consideration of £400,000 at a higher rate (3%) than on separate transactions for separate considerations of £200,000 each (1%). On the other hand, if an unmarried couple were to enter into the same transaction, they would not be "connected" and would pay tax at the lower rate of 1%. That does appear to be a somewhat inequitable result and is certainly not in accord with any policy on the part of Government or HMRC.

58. Mr Hitchmough says that HMRC have overlooked the effect of section 75A in raising this alleged anomaly. Section 75A applies where:

> "(a) one person (V) disposes of a chargeable interest and another person 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."

59. Mr Hitchmough submits that the three-fold conditions set out in section 75A (1) would clearly be satisfied were unmarried partners each to purchase a share in a property, owning that property as tenants in common. Where section 75A applies, SDLT must be paid by reference to the aggregate consideration (*ie* £400,000 in the example given above) (see section 75A(4)).

60. Miss Tipples submits that this analysis of section 75A is incorrect. She says that the condition in paragraph (b) is not satisfied on KCL's approach to the legislation on the basis that there are no scheme transactions within that paragraph. The definition requires a number of transactions but on KCL's case there is only one transaction involved in the disposal of the chargeable interest (*ie* the undivided share of the relevant unmarried partner).

61. We incline to the view that Miss Tipples is correct, but it is unnecessary to decide the point. It is unnecessary to do so for the reason given in paragraph 62 below. In any case, even he is wrong about section 75A, he says that it is not necessarily the case that the result is in any sense anomalous. He points out that it is by no means unusual for married and unmarried couples to be treated differently for tax purposes. The tax legislation is full of such examples. Differential tax treatment can either benefit married couples (*eg* exemption from inheritance tax of transfers of value between spouses) or prejudice against them (*eg* principle private residence relief from capital gains tax is available on only a single residence for spouses living together, but could be available on two residences for an unmarried couple).

62. In our judgment, the five points which we have just discussed in paragraphs 47 to 61 above, even taken cumulatively, are insufficient to enable us to depart from what we see as the clear meaning of the statutory provisions. If there was a relevant ambiguity, the third point, and to some extent, the second point would give real support to the adoption of the construction for which Mr Peacock and Mr Hitchmough contend; but we do not perceive an ambiguity which would justify adopting that construction. We do not think that the anomaly in relation to section 53 – it is not, in fact, an anomaly but a loophole – would justify us from taking that course either. And that is so even if there are no competing loopholes or anomalies which arise on their construction of the legislation.

63. We would make one other point on which it is unnecessary to rely in reaching our decision but which lend support to it. It is this. Although Mr Hitchmough suggests that a difference in treatment between married and unmarried couples in the example considered is unexceptional, the fact that he is keen to establish that section 75A results in the unmarried couple being treated like the married couple suggests that he recognises that a more principled result in the case of SDLT would be to treat them in the same way. We certainly find it hard to see any rational basis for treating them differently in the context of this tax. The facts (i) that the connected persons provisions only become relevant on his construction and (ii) that the escape from the differential treatment which results from the connected persons provisions is through section 75A suggest that HMRC are right in their approach to the main issue in identifying the relevant transaction, in the case of both the married and unmarried couple, as the acquisition of 100% of the beneficial interest.

64. Finally, in that context, it is to be noted that section 75A is an anti-avoidance provision. If Mr Hitchmough is right in his approach to the main issue, we find it impossible to see why it was thought necessary to introduce a new section 75A (by Finance Act 2007) which included within its scope the acquisition of a property by tenants in common. If he is right, the result is that all acquisitions by tenants in common where no question of relief or exemption arises will suffer the same tax as an acquisition by a sole acquirer. That is an extraordinarily convoluted way of achieving the result. It is much more likely, we think, that the result from the introduction of SDLT was, for the reasons which we have given, that SDLT was due on 100% of the consideration because there was a single land transaction.

Conclusions

76. For the reasons set out above, we conclude that:

(1)in respect of the acquisition of each of the PE Properties and the Lease there was a single land transaction for the purposes of SDLT, namely the acquisition of 100% of the beneficial interest in the property in question;

(2)there are joint purchasers of the whole of the beneficial interest acquired, namely, in the case of the PE Properties, the beneficiaries of the Pollen Estate and, in the case of the Lease, Professor Trembath and KCL; and

(3)since the purchaser of the PE Properties was not solely a charity or charities or a Minister of the Crown, and the purchaser of the Lease was not solely a charity, the respective claims for relief from SDLT fail. Accordingly, the Appeals of PETCL and KCL are dismissed.

Mr Justice Warren
Chamber President

Timothy Herrington
Upper Tribunal Judge

Release Date: 03 August 2012

APPENDIX

Relevant Provisions of the Finance Act 2003

42 The tax

(1) A tax (to be known as "stamp duty land tax") shall be charged in accordance with this Part on land transactions.

(2) The tax is chargeable –

(a) whether or not there is any instrument effecting the transaction,

(b) if there is such an instrument, whether or not it is executed in the United Kingdom, and

(c) whether or not any party to the transaction is present, or resident, in the United Kingdom.

(3) …

43 Land transactions

(1) In this Part a "land transaction" means any acquisition of a chargeable interest.

As to the meaning of "chargeable interest" see section 48.

(2) Except as otherwise provided, this Part applies however the acquisition is effected, whether by act of the parties, by order of a court or other authority, by or under any statutory provision or by operation of law.

(3) For the purposes of this Part –

(a) the creation of a chargeable interest is –

(i) an acquisition by the person becoming entitled to the interest created, and

(ii) a disposal by the person whose interest or right is subject to the interest created;

(b) …

(c) …

(d) …

(4) References in this part to the "purchaser" and "vendor", in relation to a land transaction, are to the person acquiring and the person disposing of the subject-matter of the transaction.
These expressions apply even if there is no consideration given for the transaction.
(5) A person is not treated as a purchaser unless he has given consideration for, or is a party to, the transaction.
(6) References in this Part to the subject-matter of a land transaction are to the chargeable interest acquired (the "main subject-matter"), together with any interest or right appurtenant or pertaining to it that is acquired with it.

44 Contract and conveyance

(1) This section applies where a contract for a land transaction is entered into under which the transaction is to be completed by a conveyance.
(2) A person is not regarded as entering into a land transaction by reason of entering into the contract, but the following provisions have effect.
(3) to (11) …

48 Chargeable interests

(1) In this Part "chargeable interest" means –
- (a) an estate, interest, right or power in or over land in the United Kingdom, or
- (b) the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power,

other than an exempt interest.
(2) to (7) …

49 Chargeable transactions

(1) A land transaction is a chargeable transaction if it is not a transaction that is exempt from charge.
(2) Schedule 3 provides for certain transactions to be exempt from charge.
…

53 Deemed market value where transaction involves connected company

(1)This section applies where the purchaser is a company and –
- (a) the vendor is connected with the purchaser, or
- (b) some or all of the consideration for the transaction consists of the issue or transfer of shares in a company with which the vendor is connected.

(1A)The chargeable consideration for the transaction shall be taken to be not less than-
- (a) the market value of the subject-matter of the transaction as at

the effective date of the transaction, and

(b) if the acquisition is the grant of a lease at a rent, that rent.

(2) Section 1122 of the Corporation Tax Act 2010 (connected persons) has effect for the purposes of this section.

(3) In this section –

"company" means any body corporate;

"shares" includes stock and the reference to shares in a company includes a reference to securities issued by a company.

(4) Where this section applies paragraph 1 of Schedule 3 (exemption of transactions for which there is no chargeable consideration) does not apply.

But this section has effect subject to any other provision affording exemption or relief from stamp duty land tax.

(5) This section is subject to the exceptions provided for in section 54.

55 Amount of tax chargeable: general

(1) The amount of tax chargeable in respect of a chargeable transaction is a percentage of the chargeable consideration for the transaction.

(2) That percentage is determined by reference to whether the relevant land –

(a) consists entirely of residential property (in which case Table A below applies), or

(b) consists of or includes land that is not residential property (in which case Table B below applies),

and, in either case, by reference to the amount of the relevant consideration.

TABLE A: RESIDENTIAL

Relevant consideration	*Percentage*
Not more than £125,000	0%
More than £125,000 but not more than £250,000	1%
More than £250,000 but not more than £500,000	3%
More than £500,000	4%

TABLE B: NON-RESIDENTIAL OR MIXED

Relevant consideration	*Percentage*
Not more than £150,000	0%
More than £150,000 but not more than £250,000	1%
More than £250,000 but not more than £500,000	3%
More than £500,000	4%

(3) For the purposes of subsection (2) –

(a) the relevant land is the land an interest in which is the main subject-matter of the transaction, and

(b) the relevant consideration is the chargeable consideration for the transaction,

subject as follows.

(4) If the transaction in question is one of a number of linked transactions –

(a) the relevant land is any land an interest in which is the main subject-matter of any of those transactions, and

(b) the relevant consideration is the total of the chargeable consideration for all those transactions.

(5) to (7)…

68 Charities relief

(1) Schedule 8 provides for relief from stamp duty land tax for acquisitions by charities.

(2) Any relief under that Schedule must be claimed in a land transaction return or an amendment of such a return.

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.

(3) The scheme transactions may include, for example –

(a) the acquisition by P of a lease deriving from a freehold owned or formerly owned by V;

(b) a sub-sale to a third person;

(c) the grant of a lease to a third person subject to a right to terminate;

(d) the exercise of a right to terminate a lease or to take some other action;

(e) an agreement not to exercise a right to terminate a lease or to take some other action;

(f) the variation of a right to terminate a lease or to take some other action.

(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.

(5) The chargeable consideration on the notional transaction mentioned in subsections (1)(c) and (4)(b) is the largest amount (or aggregate amount) –

(a) given by or on behalf of any one person by way of consideration for the scheme transactions, or

(b) received by or on behalf of V (or a person connected with V within the meaning of section 1122 of the Corporation Tax Act 2010) by way of consideration for the scheme transactions.

(6) The effective date of the notional transaction is –

(a) the last date of completion for the scheme transactions, or

(b) if earlier, the last date on which a contract in respect of the scheme transactions is substantially performed.

(7) to (12)…

76 Duty to deliver land transaction return

(1) In the case of every notifiable transaction the purchaser must deliver a return (a "land transaction return") to the Inland Revenue before the end of the period of 30 days after the effective date of the transaction.

(2)…

(3)…

77 Notifiable transactions

(1) A land transaction is notifiable if it is –

(a) an acquisition of a major interest in land that does not fall within one or more of the exceptions in section 77A,

…

85 Liability for tax

(1) The purchaser is liable to pay the tax in respect of a chargeable transaction.

(2) As to the liability of purchasers acting jointly see –

section 103(2)(c) (joint purchasers);

Part 2 of Schedule 15 (partners); and

Paragraph 5 of Schedule 16 (trustees).

103 Joint purchasers

(1) This section applies to a land transaction where there are two or more purchasers who are or will be jointly entitled to the interest acquired.

(2) The general rules are that –

(a) any obligation of the purchaser under this Part in relation to the transaction is an obligation of the purchasers jointly but may be discharged by any of them,

(b) anything required or authorised by this Part to be done in relation to the purchaser must be done by or in relation to all of them, and

(c) any liability of the purchaser under this Part in relation to the transaction (in particular, any liability arising by virtue of the failure to fulfil an obligation within paragraph (a)), is a joint and several liability of the purchasers.

These rules are subject to the following provisions.

(3) If the transaction is a notifiable transaction, a single land transaction return is required.

(4) The declaration required by paragraph 1(1)(c) of Schedule 10 … (declaration that return…is complete and correct) must be made by all the purchasers.

(5) If the Inland Revenue give notice of an enquiry into the return -

(a) the notice must be given to each of the purchasers,

(b) the powers of the Inland Revenue as to the production of documents and provision of information for the purposes of the enquiry are exercisable separately (and differently) in relation to each of the purchasers,

(c) any of the purchasers may apply for a direction that a closure notice be given (and all of them are entitled to be parties to the application), and

(d) the closure notice must be given to each of the purchasers.

(6) A Revenue determination or discovery assessment relating to the transaction must be made against all the purchasers and is not effective against any of them unless notice of it is given to each of them whose identity is known to the Inland Revenue.

(7) In the case of an appeal arising from proceedings under this Part relating to the transaction -

(a) the appeal may be brought by any of the purchasers,

(b) notice of the appeal must be given to any of them by whom it is not brought,

(c) the agreement of all the purchasers is required if the appeal is to be settled by agreement,

(d) if it is not settled, and is notified to the tribunal, any of them are entitled to be parties to the appeal, and]

(e) the tribunal's decision on the appeal binds all of them.

(7A) In a case where subsection (7) applies and some (but not all) of the purchasers require HMRC to undertake a review under paragraph 36B or 36C of Schedule 10 –

(a) notification of the review must be given by HMRC to each of the other purchasers whose identity is known to HMRC,

(b) any of the other purchasers may be a party to the review if they notify HMRC in writing,

(c) the notice of HMRC's conclusions must be given to each of the other purchasers whose identity is known to HMRC,

(d) paragraph 36F of Schedule 10 (effect of conclusions of review) applies in relation to all of the purchasers, and

(e) any of the purchasers may notify the appeal to the tribunal under paragraph 36G.

105 Trustees

Schedule 16 has effect with respect to the application of this Part in relation to trustees.

107 Crown application

(1) This Part binds the Crown, subject to the following provisions of this section.

(2) A land transaction under which the purchaser is any of the following is exempt from charge:

Government

A Minister of the Crown

…

108 Linked transactions

(1) Transactions are "linked" for the purposes of this Part if they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them.

Section 1122 of the Corporation Tax Act 2010 (connected persons) has effect for the purposes of this subsection.

(2) Where there are two or more linked transactions with the same effective date, the purchaser, or all of the purchasers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction.

(3) Where two or more purchasers make a single return in respect of linked transactions, section 103 (joint purchasers) applies as if –

(a) the transactions in question were a single transaction, and

(b) those purchasers were purchasers acting jointly.

…

117 Meaning of "major interest" in land

(1) References in this Part to a "major interest" in land shall be construed as follows.

(2) In relation to land in England or Wales, the references are to –

(a) an estate in fee simple absolute, or

(b) a term of years absolute,

whether subsisting at law or in equity

…

121 Minor definitions

In this Part –

…

"jointly entitled" means –

(a) in England and Wales, beneficially entitled as joint tenants or tenants in common,

(b) in Scotland, entitled as joint owners or owners in common,

(c) in Northern Ireland, beneficially entitled as joint tenants, tenants in common or coparceners;

…

SCHEDULE 3

No chargeable consideration

1. A land transaction is exempt from charge if there is no chargeable consideration for the transaction.

…

SCHEDULE 8

Charities relief

1. (1) A land transaction is exempt from charge if the purchaser is a charity and the following conditions are met.

Relief under this Schedule is referred to in this part as "charities relief".

(2) The first condition is that the purchaser must intend to hold the subject-matter of the transaction for qualifying charitable purposes, that is –

(a) for use in furtherance of the charitable purposes of the purchaser or of another charity, or

(b) as an investment from which the profits are applied to the charitable purposes of the purchaser.

(3) The second condition is that the transaction must not have not been entered into for the purpose of avoiding tax under this Part (whether by the purchaser or any other person).

(4) In this paragraph a "charity" means a body or trust established for charitable purposes only.

Withdrawal of charities relief

2. (1) Where in the case of a transaction ("the relevant transaction") that is exempt by virtue of this Schedule –

(a) a disqualifying event occurs –

(i) before the end of the period of three years beginning with the effective date of the transaction, or

(ii) in pursuance of, or in connection with, arrangements made before the end of that period,

and

(b) at the time of the disqualifying event the purchaser holds a chargeable interest –

(i) that was acquired by the purchaser under the relevant transaction, or

(ii) that is derived from an interest so acquired,

charities relief in relation to the relevant transaction, or an appropriate proportion of it, is withdrawn and tax is chargeable in accordance with this paragraph.

(2) The amount chargeable is the amount that would have been chargeable in respect of the relevant transaction but for charities relief or, as the case may be, an appropriate proportion of the tax that would have been so chargeable.

(3) For the purposes of this paragraph a "disqualifying event" means –

(a) the purchaser ceasing to be established for charitable purposes only, or

(b) the subject-matter of the transaction, or any interest or right derived from it, being used or held by the purchaser otherwise than for qualifying charitable purposes.

(4) In sub-paragraphs (1) and (2) an "appropriate proportion" means an appropriate proportion having regard to –

(a) what was acquired by the purchaser under the relevant transaction and what is held by the purchaser at the time of the disqualifying event, and

(b) the extent to which what is held by the purchaser at that time becomes used or held for purposes other than qualifying charitable purposes.

(5) In this paragraph "qualifying charitable purposes" has the same meaning as in paragraph 1.

Cases where first condition not fully met

3. (1) This paragraph applies where –

(a) a land transaction is not exempt from charge under paragraph 1 because the first condition in that paragraph is not met, but

(b) the purchaser ("C") intends to hold the greater part of the subject-matter of the transaction for qualifying charitable purposes.

(2) In such a case –

(a) the transaction is exempt from charge, but

(b) for the purposes of paragraph 2 (withdrawal of charities relief) "disqualifying event" includes –

(i) any transfer by C of a major interest in the whole or any part of the subject-matter of the transaction, or

(ii) any grant by C at a premium of a low-rental lease of the whole or any part of that subject-matter,

that is not made in furtherance of the charitable purposes of C

(3) For the purposes of sub-paragraph (2)(b)(ii) –

(a) a lease is granted "at a premium" if there is consideration other than rent, and

(b) a lease is a "low-rental" lease if the annual rent (if any) is less than £1,000 a year.

(4) In relation to a transaction that, by virtue of this paragraph, is a disqualifying event for the purposes of paragraph 2 –

(a) the date of the event for those purposes is the effective date of the transaction;

(b) paragraph 2 has effect as if –

(i) in sub-paragraph (1)(b), for "at the time of" there were substituted "immediately before",

(ii) in sub-paragraph (4)(a), for "at the time of" there were substituted "immediately before and immediately after", and

(iii) sub-paragraph (4)(b) were omitted.

(5) In this paragraph –

"qualifying charitable purposes" has the same meaning as in paragraph 1;

"rent" has the same meaning as in Schedule 5 (amount of tax chargeable: rent) and

"annual rent" has the same meaning as in paragraph [9A] of that Schedule.

Charitable trusts

4. (1) This Schedule applies in relation to a charitable trust as it applies in relation to a charity.

(2) In this paragraph "charitable trust" means –

(a) a trust of which all the beneficiaries are charities, or

(b) a unit trust scheme in which all the unit holders are charities,

and "charity" has the same meaning as in paragraph 1.

(3) In this Schedule as it applies by virtue of this paragraph –

(a) references to the purchaser in paragraphs (a) and (b) of paragraph 1(2) are to the beneficiaries or unit holders, or any of them;

(b) the reference to the purchaser in paragraph 2(3)(a) is to any of the beneficiaries or unit holders;

(c) the reference in paragraph 3(2)(b) to the charitable purposes of C is to those of the beneficiaries or unit holders, or any of them.

SCHEDULE 16

Meaning of "settlement" and "bare trust"

1. (1) In this Part "settlement" means a trust that is not a bare trust.

(2) In this Part a "bare trust" means a trust under which property is held by a person as trustee –

(a) for a person who is absolutely entitled as against the trustee, or who would be so entitled but for being a minor or other person under a disability, or

(b) for two or more persons who are or would be jointly so entitled, and includes a case in which a person holds property as nominee for another.

(3) In sub-paragraph (2)(a) and (b) the references to a person being absolutely entitled to property as against the trustee are references to a case where the person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustee, to resort to the property for payment of duty, taxes, costs or other outgoings or to direct how the property it to be dealt with.

(4) In sub-paragraph (2) "minor", in relation to Scotland, means a person under legal disability by reason of nonage.

Interests of beneficiaries under certain trusts

2. Where property is held in trust under the law of Scotland, or of a country or territory outside the United Kingdom, on terms such that, if the trust had effect under the law of England and Wales, a beneficiary would be regarded as having an equitable interest in the trust property –

(a) that beneficiary shall be treated for the purposes of this Part as having such an interest notwithstanding that no such interest is recognised by the law of Scotland or, as the case may be, the country or territory outside the United Kingdom, and

(b) an acquisition of the interest of a beneficiary under the trust shall accordingly be treated as involving the acquisition of an interest in the trust property.

Bare trustee

3. (1) Subject to sub-paragraph (2), where a person acquires a chargeable interest or an interest in a partnership 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.

(2) Sub-paragraph (1) does not apply in relation to the grant of a lease.

(3) Where a lease is granted to a person as bare trustee, he is treated for the purposes of this Part, as it applies in relation to the grant of the lease, as purchaser of the whole of the interest acquired.

(4) Where a lease is granted by a person as bare trustee, he is to be treated for the purposes of this Part, as it applies in relation to the grant of the lease, as vendor of the whole of the interest disposed of.

Acquisition by trustees of settlement

4. Where persons acquire a chargeable interest or an interest in a partnership as trustees of a settlement, they are treated for the purposes of this Part, as it applies in relation to that acquisition, as purchasers of the whole of the interest acquired (including the beneficial interest).

5. to 8. …