

Crest Nicholson fails to build case over £1.29m SDLT claim

A First Tier Tribunal (FTT) has ruled against a stamp duty land tax (SDLT) avoidance scheme used by FTSE 250 housebuilder Crest Nicholson, requiring the company to pay £1.29m in tax deemed to be due

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HMRC says the decision is likely to have an impact on more than 700 other cases, potentially protecting £65m of tax.

HMRC challenged what it said the artificial and complex arrangements made by the Crest Nicholson to avoid paying SDLT on three purchases of development land near Rochester in Kent for a total of more than £32m.

The avoidance scheme tried to use the transfer of property between two sub-companies to avoid SDLT, HMRC claimed. [*Crest Nicholson (Wainscott) Ltd, Crest Nicholson (South East), Crest Nicholson Operations Ltd, and the Commissioners for Her Majesty's Revenue and Customs, [2017] UKFTT 134 TC05628*].

The FTT determined that a sub-sale scheme involving a reduction in capital (effected by distribution in specie of land or rights to land) engaged the provisions of Finance Act 2003, section 45, but nevertheless gave rise to a chargeable secondary contract, whose consideration was equal to the full amount of the purchase price for the land in question.

Crest Nicholson argued that HMRC did not have a legal right to make assessments of the tax due because it was out of time to do so, and that it had not carried out its assessments properly.

The judge disagreed with these arguments and found HMRC had acted correctly throughout.

The judge stated: 'My conclusion on the facts is that the discovery assessment was properly made under para 28 Sch 10 and met the time limit under para 31(2A) Sch 10. I am satisfied that HMRC have discharged the burden of proving that the conditions were met.

'Thus if my decision that the liability to SDLT falls on South East cannot stand, that liability instead falls on Operations. Subject to the adjustment of the consideration to £32,382,120 and of the SDLT to £1,295,284, I would in such circumstances uphold the discovery assessment.'

The judgment reflects HMRC's tribunal victory in the Vardy case (2012), when it challenged a similar SDLT avoidance scheme based on complex sub-sale arrangements.

Crest Nicholson declined to comment.