

# FINANCE ACT 2012

---

## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 212: Prevention of Avoidance: Subsales Etc*

#### Summary

1. [Section 212](#) amends the Stamp Duty Land Tax (SDLT) rules on a transfer of rights (or subsale) so that the grant or assignment of an option cannot be a transfer of rights.

#### Details of the Section

2. Subsection (1) inserts new section 45(1A) into the Finance Act 2003 which prevents the grant or assignment of an option from falling within subsection 45(1)(b).

#### Background Note

3. Section 45 of the Finance Act 2003 provides, broadly, that there is only one charge to SDLT where the purchaser of an interest in land, before completing that purchase, sells on the interest in land to another person.
4. This measure is intended to address a particular SDLT avoidance scheme that attempts to abuse section 45. Under the scheme, the purchaser of an interest in land, at the same time as completing the purchase, grants an option to purchase that interest to a third party. This scheme is being widely marketed by promoters of SDLT avoidance schemes.
5. It is claimed that the transactions in this scheme fall within section 45 and that therefore no SDLT is payable on the initial purchase. The Government does not believe that this is correct and users of this scheme will be challenged by HMRC.
6. In order to prevent revenues being put at risk and to protect the public from being sold this scheme, the Government wishes to clarify that the grant or assignment of an option does not result in the completion of the original contract being disregarded. The Government believes that the grant or assignment of an option cannot be a transfer of rights and this measure will make that explicit on the face of the legislation.