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BHP PROPERTY TAX

Case Review

Issue 1

Four property tax decisions and developments every adviser should know

This first issue brings together recent SDLT and LBTT developments with practical consequences for property owners, developers, investors, trustees, landlords, tenants, corporate groups and advisers.

The focus is not academic commentary for its own sake. Each case shows how statutory wording, transactional design, evidence and devolved property law can alter the tax result.

Taken together, these decisions provide a working guide to the issues currently shaping property transaction tax advice.

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BHP provides independent, partner-led written tax opinions on complex property and private-client tax matters. We work alongside clients and their existing professional advisers, with a clearly defined scope that preserves the referring firm's wider client relationship.

Follow Simon Howley and BHP for our continuing **SDLT, LTT and LBTT Case Reports**, **FTT Private Client Tax Watch** and **Beyond Tax: Property Law Developments**. Together, these series provide clear, practical analysis of new decisions affecting property transaction taxes, private-client taxation, trusts and estates, and the wider property-law issues that influence transactions, structures and assets.

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Contents

This first issue of BHP Property Tax Case Review brings together four property transaction tax decisions and developments selected for their practical relevance to SDLT, LBTT and advisory work.

No.	Article	Page
	Introduction - why these cases matter	3
1	Tower One - section 75A and group relief	4
2	Archer - LBTT transitional leases	6
3	Oakwood Great Oak - suitable for use as a dwelling	8
4	Property118 - DOTAS and incorporation myths	10
	Conclusion - recurring themes for property tax advisers	12
	Cases and primary materials referred to	13

Why these cases matter

CLASSIFICATION	DATE	SOURCE
Property tax case review	September 2026	Bell Howley Perrotton

Property transaction tax rarely turns on labels. It turns on what the legal transaction is, what the statute actually charges, what the evidence proves at completion and whether any relief or anti-avoidance provision changes the result.

This issue brings together four developments that sit across the current SDLT and LBTT risk landscape: section 75A and group relief, Scottish transitional leases, the post-Mudan meaning of “suitable for use as a dwelling”, and the limits of what a DOTAS decision proves in property incorporation cases.

The common thread is practical. Each case affects how advisers should approach instructions, evidence, drafting, file notes and client expectations. They also show why property tax advice needs to be grounded in the legal documents and the facts at the effective date, not in assumptions or market folklore.

KEY POINT	**The recurring message is that the tax result depends on the transaction actually implemented, the statutory route actually available and the evidence actually held at completion.**

HOW BHP WORKS	**BHP provides independent, partner-led written tax opinions on complex property and private-client matters. We work alongside the client’s existing professional advisers, define our scope clearly and do not seek to displace the referring firm.**

1 Tower One St George Wharf Ltd v HMRC

Court of Appeal decision; Supreme Court appeal UKSC/2026/0015

SDLT / section 75A / group relief / connected-company transactions

Court	Court of Appeal; appeal listed in the Supreme Court
Issue	Whether a wider sequence involving a lease transfer and share sale could be recast under section 75A, and whether group relief could apply to the notional transaction.
Outcome	HMRC's SDLT assessment survived. The taxpayer succeeded on the section 54 point, but section 75A preserved the charge.
Client focus	Corporate groups, developers, SPVs, restructuring advisers and property tax teams

BACKGROUND AND CONTEXT

A Berkeley group restructuring placed the Tower at St George Wharf into a special-purpose vehicle. The group used a series of steps rather than a direct transfer, including the grant of a 999-year lease, a share purchase and a later lease transfer. The commercial aim of ring-fencing risk was accepted, but the selected route was also associated with an intended corporation tax advantage which failed.

The case is useful because it separates three questions which are often compressed in practice: what is the ordinary charging position, is a relief available, and can a wider anti-avoidance charging rule alter the result?

The Court of Appeal accepted that Tower One was right on the ordinary connected-company market-value issue. The exception in section 54(4) could apply. That did not resolve the case, because HMRC had raised section 75A by respondent's notice.

The result is a reminder that a transaction can have a commercial purpose and still be vulnerable where the steps selected to achieve that purpose form part of a wider tax-driven arrangement.

THE LEGAL ISSUE AND DECISION

Section 75A is not confined to transactions where HMRC proves a subjective SDLT avoidance motive. It operates by comparing the SDLT payable on the actual scheme transactions with the SDLT that would be payable on a notional land transaction between the original vendor and the ultimate purchaser. In Tower One, the Court of Appeal treated the share transfer as a scheme transaction because it formed an important part of the implemented plan.

The phrase "in connection with" was given real breadth. It was not enough to say that the land could theoretically have reached the appellant by a different route. The court looked at the route actually chosen and implemented. That is a practical warning: share transfers, capital contributions and group steps may need to be modelled as part of the SDLT analysis even where they are not themselves land transactions.

The group relief point is equally important. The notional transaction created by section 75A did not wipe away the actual surrounding facts and purposes. When Tower One argued that the notional transaction should attract group relief, the restriction in Schedule 7 remained relevant. A main purpose of avoiding tax, including corporation tax, could block the relief. The statutory fiction did not rewrite commercial history.

PRACTICAL IMPLICATIONS

- Map every land and non-land step, including share transfers and funding movements.
- Test relief restrictions separately from the basic relief conditions.
- Do not assume commercial rationale protects a route chosen for tax reasons.
- Model section 75A early where a property moves through intermediate entities.

WHY IT MATTERS	**The decision shows that a taxpayer can win the ordinary SDLT construction point and still lose overall because section 75A changes the charging analysis.**

LIMITATIONS AND WATCH POINTS

The Supreme Court appeal is listed for February 2027. Until then, the Court of Appeal’s section 75A analysis remains the operative authority, but the two points under appeal should be monitored carefully.

KEY TAKEAWAY	**For multi-step property restructurings, analyse the route as well as the destination.**

2 Archer (UK) Ltd v Revenue Scotland

[2025] FTSTC 10

LBTT / transitional leases / lease extensions / guidance limits

Court	First-tier Tribunal for Scotland Tax Chamber
Issue	Whether a Scottish minute of variation extending an SDLT-era lease created a deemed new lease for LBTT under the transitional provisions.
Outcome	The taxpayer succeeded. No deemed new lease arose and no LBTT was due on the extension.
Client focus	Scottish commercial tenants, landlords, advisers and businesses with historic SDLT-era leases

BACKGROUND AND CONTEXT

Archer concerned a commercial lease originally entered into before LBTT replaced SDLT in Scotland. The parties later extended the lease term by a minute of variation. Revenue Scotland treated the variation as giving rise to a deemed new lease and assessed further LBTT. The Tribunal disagreed.

The issue turned on Article 13 of the Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014. That provision depends on whether the variation would have been treated as the grant of a new lease under the SDLT regime if it had occurred immediately before 1 April 2015.

A key distinction is that Scots law can permit a lease to be extended by variation without the English-law surrender-and-regrant analysis. The Tribunal was not prepared to import English common-law treatment simply to produce the outcome described in Revenue Scotland's guidance.

The case is therefore important not only for lease extensions, but also for the wider proposition that guidance cannot create a charge not imposed by the legislation.

THE LEGAL ISSUE AND DECISION

The Tribunal approached the statutory words directly. The question was not whether it would be convenient or consistent with policy to impose LBTT, but whether the transitional provision actually did so. On the Tribunal's analysis, the Scottish variation did not satisfy the statutory condition because it would not have been treated as a new lease under the relevant SDLT provisions.

Revenue Scotland's guidance was practically important, but it could not fill a legislative gap. This matters in devolved tax systems where legislation may borrow concepts from UK-wide taxes but then operate against a different property-law background. The drafting may not always translate neatly.

The Tribunal also rejected Revenue Scotland's alternative calculation approach. If a deemed lease had arisen, the term could not be treated as beginning at the end of the original lease while the effective date was treated as the date of the variation for filing and penalty purposes. The approach had to be internally coherent.

PRACTICAL IMPLICATIONS

- Review historic LBTT returns for SDLT-era Scottish leases extended by variation.
- Do not rely on guidance alone where the charging provision is uncertain.
- Check Scots property-law characterisation before applying SDLT-derived concepts.
- Monitor Revenue Scotland's appeal and any legislative response.

WHY IT MATTERS	**The decision may affect tenants and landlords who paid LBTT or filed returns on lease extensions where the statutory basis for the charge is now disputed.**

LIMITATIONS AND WATCH POINTS

Revenue Scotland has obtained permission to appeal and has said that, pending appeal, it will continue to operate its existing guidance.

KEY TAKEAWAY	**Guidance is not a charging provision; start with the Scottish legislation and property-law analysis.**

3 Oakwood Great Oak Ltd v HMRC

[2026] UKFTT 1138 (TC) / TC09979

SDLT / section 116 / suitable for use as a dwelling / dilapidated property

Court	First-tier Tribunal (Tax Chamber)
Issue	Whether a badly deteriorated former dwelling was still suitable for use as a dwelling at the effective date.
Outcome	The appeal was allowed. The property was not residential property for SDLT purposes at completion.
Client focus	Developers, corporate purchasers, conveyancers and advisers dealing with derelict or seriously dilapidated property

BACKGROUND AND CONTEXT

Oakwood acquired Great Oak, a substantial detached property in Bushey Heath, for £2.4 million in November 2022. It filed on a non-residential basis. HMRC concluded that the property remained residential under section 116(1)(a) FA 2003. The FTT allowed the taxpayer's appeal.

The case is significant because it is the first successful "not suitable for use as a dwelling" case after the Court of Appeal's decision in Mudan. It does not reverse Mudan. Instead, it shows where the difficult factual boundary may lie.

The property had historically been used as a dwelling and retained a recognisable residential layout. It was also physically standing and theoretically capable of repair. Those points supported HMRC's case, but they were not conclusive.

The evidence showed serious damp, water ingress, cracking, defective services and extensive asbestos contamination. The asbestos point was not merely that asbestos existed; the remediation process itself required removal of services and building elements, followed by substantial reinstatement.

THE LEGAL ISSUE AND DECISION

The statutory test is not whether the property is immediately habitable. Mudan makes clear that a property may require significant works and still remain suitable for use as a dwelling. The FTT in Oakwood nevertheless rejected an approach under which theoretical repairability would always be decisive.

The Tribunal carried out a multifactorial assessment of the property at the effective date. The key question was whether the building still objectively retained the character and identity of a dwelling. The cumulative scale and practical consequences of the required remediation were central to the result.

The case is particularly useful when considering asbestos, major structural defects and development-site acquisitions. A single defect will rarely be enough. The stronger case is where the interaction of defects means that restoring residential use requires invasive removal and reconstruction rather than ordinary refurbishment.

PRACTICAL IMPLICATIONS

- Avoid relying on labels such as "uninhabitable" or "derelict".
- Assemble contemporaneous structural, asbestos, services and photographic evidence.
- Explain what must physically be removed and reinstated before residential use can resume.

- Compare the facts carefully with Mudan and HMRC’s SDLT Manual guidance.

WHY IT MATTERS	**The decision shows that the post-Mudan threshold is high, but not impossible, in exceptional condition cases.**

LIMITATIONS AND WATCH POINTS

This is an FTT decision and is fact-specific. It should be read as an example of an exceptional case, not as a general route for renovation-property refunds.

KEY TAKEAWAY	**Repairable does not necessarily mean suitable for use as a dwelling; the evidence must show the building’s actual character at completion.**

4 Property118 Ltd and Cotswold Barristers Ltd v HMRC

[2026] UKFTT 1111 (TC)

DOTAS / property incorporations / Schedule 15 / partnership folklore

Court	First-tier Tribunal (Tax Chamber)
Issue	Whether HMRC was entitled to issue DOTAS scheme reference numbers for two property incorporation arrangements.
Outcome	The appeals were allowed and the scheme reference numbers were cancelled.
Client focus	Property investors, landlords, incorporation advisers and professional referrers

BACKGROUND AND CONTEXT

The case concerned the Substantial Incorporation Structure and Capital Account Restructure used in connection with property-business incorporations. The FTT decision was about DOTAS, not about whether any particular incorporation achieved nil SDLT or whether a partnership existed for Schedule 15 purposes.

The judgment matters for SDLT advisers because the underlying structures involved property businesses, partnership analysis and the availability, in some cases, of Schedule 15 relief. However, the Tribunal was not deciding a substantive SDLT appeal.

That limitation is crucial. It would be wrong to read the cancellation of the DOTAS scheme reference numbers as a judicial endorsement of the SDLT treatment of any particular landlord incorporation.

The evidence is nevertheless useful because it records how certain ideas circulated in the property-investor market, including references to a supposed three-year period before incorporation. The judgment does not establish such a statutory rule.

THE LEGAL ISSUE AND DECISION

The FTT considered whether the relevant DOTAS hallmarks were satisfied. The appeals succeeded because the Tribunal was not persuaded that all of the statutory notification conditions were met. That result affected the scheme reference numbers; it did not answer the underlying tax treatment of each user's arrangements.

For SDLT purposes, the important practical point remains the existence and nature of a genuine partnership, the correct application of Schedule 15, the treatment of capital accounts and debt, and whether any anti-avoidance provision may apply. A landlord business does not become a partnership for SDLT simply because it is described that way in marketing material or accounts.

The decision is also a useful warning against tax folklore. If advisers or clients repeat a three-year "rule", they should be asked to identify the statutory provision. There is no general SDLT rule saying that a property partnership must have existed for three years before incorporation relief can be available. The real questions are legal and factual.

PRACTICAL IMPLICATIONS

- Do not treat a DOTAS win as a substantive SDLT clearance.
- Test partnership existence and Schedule 15 mechanics on the facts.

- Challenge unsupported references to a supposed three-year rule.
- Review engagement letters and advice to distinguish tax opinion from marketing claims.

WHY IT MATTERS	**The case helps explain why partnership incorporation myths persist, while also showing the danger of overstating what a DOTAS decision proves.**

LIMITATIONS AND WATCH POINTS

The case should be used with care. It is a DOTAS decision, not a substantive determination of SDLT liability for individual landlords or partnerships.

KEY TAKEAWAY	**The decision cancelled SRNs; it did not validate every SDLT partnership incorporation claim.**

The recurring themes for property tax advisers

Taken together, these cases show that property transaction tax risk often sits at the intersection of legal form, evidential quality and statutory design. The adviser's task is to identify that risk before completion, filing or implementation rather than after HMRC or a devolved tax authority has opened an enquiry.

1 **The route matters**
Tower One shows that the path chosen to move property can be as important as the commercial destination. Section 75A requires a full map of the implemented steps.

2 **Guidance is not legislation**
Archer shows that administrative guidance may indicate the authority's view, but the charge still depends on the legislation actually enacted.

3 **Evidence decides condition cases**
Oakwood Great Oak shows that serious dilapidation claims require detailed evidence of the building's actual character at the effective date.

4 **Do not confuse procedural wins with substantive tax clearance**
Property118 cancelled DOTAS scheme reference numbers, but it did not decide that every incorporation achieved the intended SDLT result.

5 **Tax folklore needs a statutory source**
References to supposed fixed qualifying periods or informal rules should be tested against the legislation and the actual facts.

Cases and primary materials referred to

- The Tower One St George Wharf Limited v HMRC, UK Supreme Court case page UKSC/2026/0015.
- Archer (UK) Limited v Revenue Scotland [2025] FTSTC 10 and Revenue Scotland transitional lease updates.
- Oakwood Great Oak Ltd v HMRC [2026] UKFTT 1138 (TC), TC09979.
- Property118 Ltd and Cotswold Barristers Ltd v HMRC [2026] UKFTT 1111 (TC).
- HMRC Stamp Duty Land Tax Manual, including SDLTM00372, SDLTM00380 and SDLTM00385, where relevant.

STATUS NOTE

This briefing reflects the position checked on 18 September 2026. Appeal, reporting and guidance positions may change before publication.

DISCLAIMER