

Briefing Note: Stamp Duty Land Tax

An Introduction to the Guide

On 1 December 2003 HM Revenue & Customs ("HMRC") replaced stamp duty with a new tax. Although the name was similar, (Stamp Duty Land Tax ("SDLT")) the new tax was fundamentally different from stamp duty in two ways.

Firstly, stamp duty was charged on documents which SDLT is not and secondly, SDLT is a directly enforceable tax accompanied by an extremely onerous compliance regime.

With stamp duty it was a relatively straightforward exercise for the lawyer dealing with the property transaction to submit the relevant document to the tax authorities for it to be stamped.

Under SDLT this is no longer possible. The tax is calculated on an action or a series of actions not on any particular document and the level of tax can sometimes depend on other transactions that you or persons related to you have entered into in the past. The return form that has to be submitted to HMRC is now similar to an Income Tax Return Form and can require a detailed knowledge of all your financial affairs that a lawyer dealing with a single property transaction on your behalf may not have.

You should, therefore, obtain specialist advice as early as possible on the tax consequences of entering into any property transaction we are dealing with. We may be able to advise on simple straightforward matters but cannot advise on unusual or complex arrangements or circumstances.

Briefing Note September 2009

Summary:

This short guide explains some of the complexities introduced with SDLT

Author: Marcel Bradbury

For detailed advice on all employment law matters please contact:

Marcel Bradbury
Partner

01323 435900
mb@gabyhardwicke.co.uk

The key points in relation to SDLT and your return are:

- It has to be sent to HMRC with any Tax due within 30 days of the 'Effective Date'
- The Effective Date is generally when you or someone connected with you, whether a relative or an associated company or partnership, take possession or 'get the keys to the door' (**after exchange of contracts**) or completion if later. The tax may therefore be payable before the transaction has legally completed. The tax is payable even if the keys are handed back each day.
- We need to have the SDLT return signed or approved by you before exchange of contracts since if it is submitted late there are penalties starting at £100. We might not be able to complete the transaction if we cannot be certain the return can be submitted correctly.
- We can prepare and submit the return for you, but it is your responsibility to provide us with correct information to insert in the return. If not all the information needed is provided, or is not correct you could be subject to prosecution, penalties and delays in the processing of the form and the registration of the transfer of the property at the Land Registry.
- It is your responsibility to pay the tax due but we will forward the form and tax to HMRC on your behalf.
- If you are buying the property jointly with someone else you are both liable for the full amount of tax due 'jointly and severally' in other words if one of you will not pay their share then the other party will have to pay all the tax due.
- Our name has to appear on the form as your 'Agent' so that the acknowledgement and receipt are sent to us to use when we register the land. However we are not your agent in the usual sense and will not have liability to pay any of the tax due.

Briefing Note: Stamp Duty Land Tax

- The amount stated on any completion statement we send you is an estimate of the tax due, and the amount due may be varied later. The Revenue's system is 'Pay Now, Check Later' based on self-assessment, as with Income Tax. This means they might investigate the transaction many months later, often as much as 9 months later, and may ask for more tax. In some cases they can investigate matters up to 21 years later. You might decide to deal with any such enquiry yourself, or have your accountant deal with it. If HMRC decide more tax is due you will have to pay it, though there are appeal procedures.
- Any fee charged by us for the preparation of the initial return does not cover any further correspondence with HMRC on the matter or any investigation of the return by HMRC and this will therefore be charged to you at our normal hourly fee rates.
- Your current transaction might be regarded as 'linked' with a previous transaction or any future transaction you may enter into with anyone 'connected' with you or the seller and this may result in a higher rate of tax being payable on both transactions. 'Connected' has a technical meaning used by HMRC and you may need to obtain an accountant's or specialist tax adviser's advice on this. You must tell us about any other transaction that you might have entered into or might enter into which may be linked or connected in any way. Buying a number of properties from the same seller on different dates, for example, may be regarded as linked and they may bear the highest rate of tax of 4% rather than say 1% each. Use of a relative or company by the seller or buyer to buy some of the properties may not avoid the higher rates of tax.
- Tax is payable on all the 'consideration' paid for a property, not just what is stated on a contract or transfer and so you must tell us about any other monies or services being provided by the seller or yourself as part of the overall 'deal'. If money is to be paid for anything attached to the property such as burglar alarms or conservatories then these items may also be chargeable to tax. If you have agreed to pay extra money in the future if something happens, such as the grant of planning permission, this may also be subject to tax. You must tell us if there are any such agreements.
- If the buyer is a company and in some other cases where shares are involved in the overall deal the tax will be payable on the market value rather than the price being paid. You must therefore tell us all about all aspects of the transaction.
- If the price is split between the bricks and mortar and other items such as plant, machinery or goodwill, etc., then you have to have genuine valuations of the amounts at the time you complete the Land Transaction Return and the purchase price has to be fairly and reasonably split between the items. If you do not have this evidence HMRC might argue many months later that there has been tax avoidance, especially if the result is that the value of the bricks and mortar is just below one of the tax bands of £150k or £500k.
- HMRC require you to keep any relevant papers related to the return for at least SIX years, even if you have disposed of the property in question.
- In many cases involving leases further tax returns will be needed and we will highlight this in our report letter to you. It is your responsibility to make a diary note to file them at the appropriate time. If you do not file them at the appropriate time (normally within 30 days of the relevant event) you will be liable for penalties starting at £100. We do not accept any responsibility for reminding you of the need to file any additional returns and it is your responsibility to do so. For example, additional returns may be needed if there is any change in the terms of the lease, the rent, at the end of the lease and where you remain in the property after the lease is expired. We are happy to advise you on such matters at the appropriate time for a fee based on our normal hourly fee rates, or you may choose to obtain advice from an accountant or other tax specialist.

Briefing Note: Stamp Duty Land Tax

Any fee quoted by us for your transaction may need to be increased if any of the points mentioned above apply to the transaction, or if some other complexity occurs. In such case we may suggest that you obtain specialist tax advice or that it is not appropriate for us to submit the return on your behalf. In that case, you will have to make your own arrangements regarding advice on your tax liabilities and the filing of the return. These arrangements will have to be acceptable to us and any lender who is financing the transaction.

In the first instance please speak to the lawyer dealing with your transaction who can discuss with you the best way forward.

If you would like to know more about this topic or our other legal services, please contact:

Gaby Hardwicke
33 The Avenue
Eastbourne
East Sussex
BN21 3YD

Tel: 01323 435900
Fax: 01323 435901
info@gabyhardwicke.co.uk
www.gabyhardwicke.co.uk