Gaby Hardwicke SOLICITORS

Briefing Note: Stamp Duty Land Tax Commercial Property

Introduction

Stamp Duty Land Tax ("SDLT") is a tax calculated on an action or on a series of actions involving property and not on any particular document. The level of tax can sometimes depend on other transactions that you or persons related to you have entered into in the past.

A Land Transaction Return ("LTR") must be submitted to HM Revenue & Customs ("HMRC") 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
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Summary:
This short guide explains some SDLT considerations arising on property transactions.

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This guide should not be relied upon as legal or tax advice and you should contact us for legal advice on your specific circumstances.

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

- The return form must be sent to HMRC with any tax due within 14 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 property' (for example, after exchange of contracts or completion, if later). The tax may therefore be payable before the transaction has legally completed, even if the keys are handed back each day.
- SDLT is a self-assessed tax and so we need to have the LTR signed or approved by you before submitting it to HMRC and if it is submitted late there are penalties which are automatically applied, starting at £100.
- We can prepare and submit the LTR for you, but it is your responsibility to provide us with correct information to insert in the LTR. If you do not provide all the information necessary, or provide incorrect information you could be subject to prosecution, penalties and, at the very least, delays in the processing of the LTR and, where applicable, the registration of any transactional document at the Land Registry.
- It is your responsibility to pay the tax due but we can forward the LTR and tax to HMRC on your behalf.
- If you are acquiring a property interest jointly with someone else, then you are both liable for the full amount of tax due 'jointly and severally'. In other words, if one of you does not pay your 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, for example, we need to make a corresponding application to the Land Registry. However, we are not your agent in the usual sense and will not have liability to pay any of the tax due for the reasons stated above.
- 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. HMRC'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

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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 LTR 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 may 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 tax liability. '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 anyway.

- SDLT is payable on all the 'consideration' paid for a property, not just what is stated on a contract, lease or transfer. Therefore, you must tell us about any other monies or services being provided by the seller or yourself as part of the overall 'deal'. If you have agreed to pay further consideration 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.

- In certain circumstances, SDLT may be payable on the market value rather than the price being paid. It is therefore essential that you tell us 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 LTR 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.

- SDLT is calculated on the VAT-inclusive amount of the total consideration payable on the relevant property transaction.

- HMRC require you to keep any relevant papers related to the LTR for a period of 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.. 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 14 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 – such as following a rent review and/or where you remain in the property after the lease term has 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.

Any fee estimate given 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 you obtain specialist tax advice or that it is not appropriate for us to submit the LTR 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 LTR. 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.

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If you would like to know more about this topic or our legal services, please contact Hannah Bambury on 01323 435900 or hannah.bambury@gabyhardwicke.co.uk

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