Factfile - Issue 20

INTRODUCTION TO STAMP DUTY LAND TAX ("SDLT"):

SDLT is a tax on land transactions. It replaced Stamp Duty which was a tax on instruments dealing with, inter alia, and land transactions. It was imposed by the Finance Act 2003 but has since been much amended.

WHEN IS THE TAX CHARGEABLE?

SDLT is chargeable on land transactions. Land transactions are "the acquisition of a chargeable interest" by a purchaser. It is the purchaser who is liable for the tax.

WHAT IS A CHARGEABLE INTEREST?

The drafting of the definition in the Act is very wide. It includes "an estate, interest, right or power over land in the United Kingdom" and "the benefit of an obligation, restriction or condition, affecting the value of any such estate, interest right or power".

The most common examples are dealings with freehold and leasehold interests in land. If you buy a house or take a transfer or lease of a flat or commercial premises duty may be payable according to value. The obligation to make a return and pay the tax will be with the purchaser.

The width of the definition is such that if there is any dealing with land or any interest in land the impact of SDLT must be considered.

WHEN DOES LIABILITY TO TAX ARISE?

Liability to tax and the obligation to report arise following the "effective date" of the transaction. This is usually the date of completion. If, however, there is a contract for a land transaction and substantial performance of that contract takes place then the transaction must be notified and duty paid. Substantial performance takes place in the following circumstances:-

(i) the purchaser or a person connected with the purchaser takes possession of the whole, or substantially the whole, of the subject matter of the contract. Thus if you contract to buy a house and you move in or you have agreed to let commercial premises and allow the tenant in to fit out before completion in both these cases there is substantial performance.

(ii) if the purchaser becomes entitled to receive rents or profits from the land..

(iii) if a substantial amount of the consideration for the purchase is paid to the Seller .

EXEMPTIONS AND RELIEF

These are numerous. Some of the more prominent are:-

(a) Group Relief:

Transfers of land within a 75% group of companies are exempt from SDLT. There are, however, some complex avoidance restrictions on the availability of relief. An example of this is when land is transferred to a group company and there is an arrangement to remove the receiving company from the group. There are also claw-back provisions. If within 3 years of the original transfer the group company receiving the land comes out of the group then the relief is withdrawn and SDLT has to be paid.

(b) No Chargeable Consideration:

Transactions for no chargeable consideration are exempt from SDLT. Thus, gifts are not chargeable.

(c) Conversion of Partnership to LLP:

Exemption is given to the transfer of land to an LLP in connection with its incorporation. Three conditions apply:-

1. The transfer must take place within one year of incorporation.
2. The transfer must be by a partner in a partnership comprised of all the persons who are to become partners in the LLP and no one else.
3. The shares of the partners in the LLP must be the same as the original partnership or any differences in those shares must not have arisen for tax avoidance reasons.

(d) Compliance with Planning Obligations:

It is part of the planning process that "planning gain" is sought by local planning authorities to allow for the grant of a planning permission. This is done by planning obligations in an agreement made in compliance with the provisions of Section 106 of the Town and Country Planning Act 1990. The transfer of land to the planning authority in pursuance of Section 106 Agreement (amongst others) is exempt.

NOTIFICATION:

SDLT is due from the "purchaser" of an interest in land. Compliance is the purchaser's responsibility. The SDLT compliance process was modelled on the income and corporation taxes self assessment regime.

The normal procedure is that within 30 days of the effective date of a notifiable land transaction the purchaser must deliver a return to HMRC stating the tax payable and accompanied by the payment of tax. It is now possible to make a return on-line and the system is slightly different. HMRC have a nine month window to begin an enquiry into the correctness of the return.

This is a very complex area and returns may need to be made even though no tax is payable. This is beyond the scope of this article.

If a return is not made in time, then interest and penalties are payable.

Land transactions also have to be registered at H M Land Registry which is the UK's central land registry. Failure to register at H M Land Registry has serious effects on the title of the purchaser. It is not possible for the purchaser to register its interest in land without a certificate from HMRC that a return has been lodged or a self certificate that no return is necessary.

This is a very brief synopsis of a highly complex tax. The advice of a practitioner should be taken when a land transaction is contemplated.

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See Page 3 for the full Property & Construction Group members list

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