Real Estate

Stamp Duty Land Tax

Stamp duty land tax (SDLT) is still creating issues and planning opportunities for all parties in the Real Estate market. Changes to the regime continue to be made as the Revenue seeks to keep up with the latest SDLT planning.

Those involved in property transactions need to be aware not only of the planning opportunities but also their obligations to make returns and the impact transactions may have on future structuring.

Action points
- review each transaction to see if planning is possible
- take care that reliefs still apply
- maintain SDLT records and review transactions to ensure clawback liabilities do not arise

SDLT Planning
A number of planning structures are available under SDLT.

- Undertaking Schemes
  Notwithstanding recent anti-avoidance provisions acquisition relief on the transfer of a let property or ‘undertaking’ is still available to reduce the rate of SDLT to ½% where it is combined with the assumption of debt.

- SPV Schemes
  There are still SPV schemes which manage to get past the new anti-avoidance measures which were introduced to clamp down on the use of SPVs as a measure of avoiding SDLT.

  Depending on the structure adopted there may be stamp duty charge at ½% but in some cases the structure can be implemented at the last minute when there are ‘arrangements’ in place with the buyer.

- Unit Trust Schemes
  Using a new relief in the SDLT regime it is possible for sellers to transfer property into a unit trust structure and sell it to the buyer free of SDLT.

- ‘Prudential’ Schemes
  The Revenue accept that so called ‘Prudential’ schemes work under the SDLT regime in the same way as they did under the stamp duty regime. In essence the Seller contracts to sell bare land for a certain amount but also contracts to construct a building on the land. Provided certain conditions are met SDLT will only be payable on the land element.

SDLT Reliefs
The reliefs from SDLT are extremely valuable but the introduction of wide ranging anti-avoidance conditions have meant that care needs to be taken to ensure the relief is still available.

- Disadvantaged Areas Relief
  This should always be considered first. If a commercial property situation in a disadvantaged area is transferred, there is no SDLT to pay.

- Sub-sale Relief
  It is still possible to obtain relief from SDLT on what is commonly known as a subsale. This is where A contracts to sell property to B, but B directs that the conveyance be conveyed to C (or assigns its right to have the property conveyed to it). If the relief is available SDLT will only be payable by C not B. Under the SDLT version of the relief a new condition has been added requiring that the first contract must not be ‘substantially performed’ early. In practice this means that neither should take possession of the property or be entitled to receive rents early.

- Sale and Leaseback Relief
  Sale and leaseback transactions have been very common and now it is possible under the new regime for the leaseback element to be exempt from SDLT, a valuable relief in view of the new lease duty charge.

- Group Relief
  Group relief survives under the new regime in much the same form

Continued overleaf
except that the clawback regime for
degrouping transferee companies
has been widened. There is no
longer any need to make a separate
application to claim the relief but the
SDLT return must still be completed.

Compliance Issues
Holders of property need to consider
carefully their compliance position
under the new regime. In particular the
number of circumstances where
additional returns and SDLT payments
are required have substantially
increased. For both corporate groups
and tenants it is essential that activity
is monitored to manage the risk of
liabilities and penalties arising:-

- **Group Issues**
  Broadly speaking, if a company
  benefits from any group, acquisition
  or reconstruction relief so that no
  SDLT is payable on an acquisition,
  the SDLT will be clawed back if,
  within 3 years of the acquisition,
  there is a change of control of the
  buyer and the property is still held
  in that company (or another
  member of the buyer’s group).
  Additional SDLT liabilities can also
  arise from distributions in specie
  where there have been prior
  transfers.

  Groups need to be aware of these
  clawback provisions and monitor
  changes in group structure to
  ensure that they are not triggered
  or if they are that the group is not
  liable.

- **Lease Issues**
The SDLT legislation requires
additional returns and in most cases
SDLT to be paid by tenants in a
variety of circumstances. For
example, on the variation or
renewal of a lease, any rent reviews
in the first five years, the fixing of
an ‘abnormal’ rent review at any
time, assignment of a previous SDLT
exempt lease and so on. For
property and tax managers there is
a practical issue in putting in place
management systems which ensure
the relevant Land Transaction
return can be completed within 30
days of these events.

If you have any questions about
stamp duty land tax please contact a
member of the property tax team.

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This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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Should you have any questions please contact your usual Pinsent Masons adviser who will be able to assist you further.