



Property Briefing 62

June 2010

SDLT “efficient” sub-sale schemes under the Spotlight

On 7th June 2010, HMRC added certain Stamp Duty Land Tax (SDLT) avoidance schemes to their series of Spotlights on arrangements or schemes that they are likely to challenge. This is the tenth Spotlight to be published by HMRC since the project was launched in April 2009, but the first to deal specifically with SDLT.

The aim of HMRC’s Spotlight series is to provide general advice on tax planning schemes that those considering them should be wary of and to identify specific schemes that they intend to investigate and potentially challenge when reliefs are claimed. It is important to remember that schemes that have not yet featured in Spotlights can still be subject to challenge.

What schemes are particularly highlighted?

HMRC are specifically concerned about potential abuse of sub-sale relief, which is provided for at s.45 of the Finance Act 2003. The legitimate objective of sub-sale relief is to ensure that where property transactions take place in stages, SDLT is only paid once on the consideration. So, for example, where company A contracts to sell a property to company B for £5million, but before completion company B assigns the benefit of the contract or contracts to sell the land to Company C, the final conveyance will be made from Company A to Company C. Under the usual SDLT rules this would give rise to two charges to SDLT but the legislature considered that unfair and s.45 provides for relief from one of those charges, so that SDLT is only paid once on the £5 million purchase price.

There is, however, scope to manipulate sub-sale relief by using an intermediate sale to reduce SDLT liability on a transaction or indeed negate it entirely. HMRC’s view, expressed in the Spotlight, is that these contrived transactions should produce a charge to SDLT on the full amount paid for the property.

Anti-avoidance legislation

Those considering any SDLT reduction scheme must have regard to SDLT anti-avoidance rules, which have been in place since 2005. Anti-avoidance legislation from December 2006, seeks to specifically counter any arrangement which artificially depresses or avoids SDLT on property transactions. The legislation specifically deals with some forms of sub-sale scheme, but also contains a general prohibition.

The general prohibition requires three conditions to be met for a scheme to be caught:

- (a) there must be a disposal of an interest in land by a person and another person ultimately acquires it (or an interest deriving from it);
- (b) there must be a number of connected or ‘scheme’ transactions; and
- (c) the total SDLT payable is less than would have been payable if there had simply been a sale from the seller to the buyer at the purchase price.

Continued...

If the conditions are met the existence of scheme will be ignored by HMRC for the purposes of calculating SDLT, which will be payable on the highest aggregate consideration for the transfer. HMRC will simply presume that the transaction was a straightforward transfer at full consideration from A to B.

Since 2005, certain SDLT avoidance schemes have been subject to a disclosure regime. Generally any scheme (subject to the thresholds below), which satisfies the following criteria must be notified to HMRC:

(a) the arrangement must enable or be expected to enable any person to obtain a tax advantage in relation to SDLT;

(b) the main benefit of the arrangement, or one of the main benefits, is the obtaining of that tax advantage; and

(c) the arrangement must fall within the types of arrangement specified the legislation.

The precise circumstances dictating when a disclosure needs to be made are complex, but most sub-sale schemes will be caught. You should also note that at present the scheme only applies to commercial property transactions with a value of more than £5 million and residential transactions with an aggregate value in excess of £1 million (there are also thresholds for mixed use property).

It is important to note that the Spotlight does not change the law. The existing SDLT framework is well established and must be considered in light of the anti-avoidance regime already in place. What the Spotlight does do is make clear that schemes of this nature are now on HMRC's priority list. The final paragraph of this particular Spotlight is:

'where HMRC find property sale arrangements that have been artificially structured to avoid paying the correct amount of SDLT these will be actively challenged, through the Courts as appropriate'.

Whether or not that happens remains to be seen. The circulation of the Spotlight itself is, of course, intended to have a depressing affect on sub-sale schemes. You should also remember that making an intentionally incorrect tax return in order to evade payment of tax is a criminal offence. It has always been a concern of this firm to ensure that our clients are advised of the potential downsides of SDLT schemes, which can sometimes turn out to be too good to be true.

James Atkins

james.atkins@rlb-law.com

© RadcliffesLeBrasseur

June 2010

Further Information

If you would like further information or to comment in general regarding this case, please contact



James Atkins

james.atkins@rlb-law.com

020 7227 6741

www.rlb-law.com

Disclaimer

This briefing is for guidance purposes only. RadcliffesLeBrasseur accepts no responsibility or liability whatsoever for any action taken or not taken in relation to this note and recommends that appropriate legal advice be taken having regard to a clients own particular circumstances.

LONDON: 5 Great College Street, Westminster, London, SW1P 3SJ, Tel +44 (0)20 7222 7040, Fax +44 (0)20 7222 6208

LEEDS: 6-7 Park Place, Leeds, LS1 2RU, Tel +44 (0)113 234 1220, Fax +44 (0)113 234 1573

CARDIFF: 25 Park Place, Cardiff, CF10 3BA, Tel +44 (0)29 2034 3035, Fax +44 (0)29 2034 3045