

## THE SDLT REGIME IN DETAIL

during the course of an enquiry to prevent loss of tax and the purchaser also has the opportunity to amend a return while an enquiry is in progress<sup>858</sup>.

HMRC can require the production of documents for the purposes of the enquiry. An enquiry is completed when HMRC issue a closure notice informing the purchaser that they have completed their enquiries and stating their conclusions.

### **7.7. Payment of tax**

(Section 86<sup>859</sup>)

In accordance with the legislation in force at the date of publication any SDLT due must be paid at the same time as the land transaction return is made (which must be by the filing date).

Section 86 was amended by FA 2007 with effect from 19 July 2007 so that payment of any SDLT due no longer has to accompany the land transaction return. The tax is still payable by the filing date for the return.

If a land transaction return is amended before the filing date payment of tax remains due at the filing date. If a land transaction return is amended after the filing date payment of tax is due immediately.

If tax is not paid because group relief, reconstruction or acquisition relief or charities relief has been claimed and such relief is withdrawn because a disqualifying event occurs, SDLT is payable and a land transaction return must be made within 30 days of such disqualifying event<sup>860</sup>.

In cases where HMRC issues a determination or assessment in respect of an amount of SDLT, the tax is due within 30 days of the date of issue of the determination or assessment.

#### **7.7.1. Liability for tax**

(Section 85)

The 'purchaser' is liable for the SDLT due in respect of a chargeable transaction. Joint purchasers are jointly and severally liable for the tax (section 103(2)(c)). There are special rules for trustees (see 7.18 below).

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<sup>858</sup> Subject to the time limit in paragraph 6 Schedule 10.

<sup>859</sup> As amended by FA 2007

<sup>860</sup> Section 86(2) which was also amended by FA 2007 (with effect from 19 July 2007) to require the tax to be paid not later than the filing date for the land transaction return relating to the withdrawal.

Any SDLT due can be recovered, subject to certain procedures, by HMRC pursuant to the provisions Schedule 12.

### **7.8. Deferring payment of SDLT in the case of uncertain or contingent consideration<sup>861</sup>**

(Section 90 and Part 4 Stamp Duty Land Tax (Administration) Regulations 2003)<sup>862</sup>

An application to defer the SDLT payable on a transaction may be made by the purchaser where the whole or part of the chargeable consideration:

- 1) is contingent or uncertain as defined in section 51 and
- 2) becomes payable or may become payable more than six months after the effective date of the transaction.

Deferral is not available to the extent that the consideration consists of rent.<sup>863</sup> Where the application is successful, interest will run only from 30 days after the deferred SDLT becomes payable.

An application under section 90 does not affect the purchaser's obligation to pay SDLT on any consideration that:

- has already been paid when the application is made
- will become payable within six months of the effective date of the transaction
- is not contingent
- is ascertained or ascertainable at the time the application is made.

Deferral can apply to consideration which is payable within six months if there is any part of the uncertain or contingent consideration payable after six months.

Deferral is not available where the amount of the consideration is ascertainable at the effective date but has not yet been ascertained. This is because in order to be within section 51 the amount has to depend on uncertain future events by virtue of section 51(3). Where consideration is ascertainable but not ascertained, the land transaction return (Box 10) should be completed on the basis of a best estimate of the purchase price which will be payable (which may be nil). When the final consideration is known an amendment to the land transaction return should be made.<sup>864</sup>

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<sup>861</sup> See SDLTM50900 and SDLTM50910

<sup>862</sup> SI 2003/2837

<sup>863</sup> Section 90(7)

<sup>864</sup> Under paragraph 6 Schedule 10