

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

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A payment on account may be made where a purchaser considers interest may accrue on any SDLT outstanding.

The application for deferral must be made before the filing date for the land transaction return.<sup>865</sup> There is no express power for HMRC to grant an extension for late applications.

The application must be made in writing and should be sent the Birmingham Stamp Office (and *not* to the Complex Transaction Unit, see 8.3.20).

The application must set out:<sup>866</sup>

- 1) the identity of the purchaser;
- 2) the location of the land;
- 3) the nature of the contingency/uncertain payment;
- 4) the amount of consideration for which deferment is sought;
- 5) as full details of the times of expected payments as possible to give;
- 6) a reasoned opinion as to when this part of the consideration will cease to be contingent or can be ascertained;
- 7) a calculation of the SDLT payable on the total of the actual and the contingent/uncertain consideration;
- 8) a calculation of the SDLT in respect of which the application to defer payment refers.

Where the consideration to which an application relates, or any element of that consideration, consists of the carrying out of works of construction, improvement or repair of a building or other works to enhance the value of land or the provision of services (other than the carrying out of such works) the application must contain a scheme for payment of tax.<sup>867</sup> Such a scheme must include:

- a proposal for the payment of tax in respect of the consideration, or element of the consideration, consisting of the carrying out of such works or the provision of such services within 30 days after the carrying out or from when the provision is substantially completed; and
- if the carrying out of such works or the provision of such services is expected to last for more than six months, proposals for a scheme of payment of tax at intervals of not more than six months.

HMRC may make a request for further information in order to determine if an application may be accepted.

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<sup>865</sup> Regulation 10 Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837). This will normally be 30 days from the effective date of the land transaction

<sup>866</sup> Regulation 12 Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837). See also SDLTM50910

<sup>867</sup> Regulation 13 Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837)

Payment of any SDLT which would not be due and payable if the deferral application were accepted is postponed pending the reaching of a decision on the application. If an application is refused and there is no appeal against the refusal of the application, the date on which any tax, the payment of which had been postponed pending a decision, is due and payable, is determined as if it were charged by an assessment of which notice was issued on the date on which HMRC issues to the applicant a notice of the total amount payable in consequence of the refusal of the application.

HMRC must give notice in writing to the person by whom the application was made of their decision whether to accept or refuse an application. Where HMRC accept an application, the notice must set out the terms on which the application has been accepted and, in particular, the 'relevant events' which will trigger an obligation to pay the SDLT which has been deferred.<sup>868</sup> SDLT may still be payable before the additional consideration is paid.

Where HMRC refuse an application, the notice must set out the grounds for the refusal and the total amount of tax payable in consequence of the refusal.<sup>869</sup> An application for deferral may be refused, *inter alia*, if there are 'tax avoidance arrangements' in relation to the transaction in question.<sup>870</sup>

Arrangements are 'tax avoidance arrangements' in relation to a transaction if their main object or one of their main objects is to enable payment of the tax payable in respect of the transaction to be deferred; or to avoid the amount or value of the whole or part of the chargeable consideration for the transaction being determined in accordance with section 51(1). Broadly, therefore, the avoidance targeted is the exploitation of the rules on deferred consideration.

'Arrangements' include any scheme, agreement or understanding, whether or not legally enforceable.

There is a right of appeal against a refusal by HMRC to accept an application for deferral. Notice of an appeal must be given in writing within 30 days after the date on which the notice of the decision to refuse the application was issued.

Where HMRC accept a deferral application which relates to SDLT that has already been paid, the amount already paid is repaid together with interest as

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<sup>868</sup> Regulation 16(2)(a) Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837)

<sup>869</sup> Regulation 16(3)(a) Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837)

<sup>870</sup> Regulation 17 Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837)

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from the date of payment. An application which has been accepted ceases to have effect if 'the facts and circumstances relevant to it materially change'<sup>871</sup>.

Where an application for deferral has been accepted, the purchaser must make a return or further return by the date determined in accordance with regulation 24(3).<sup>872</sup> The return must be accompanied by payment of any tax or additional tax payable. As at the date of publication the specific form of return had not been produced by HMRC so notification should be by letter to the Birmingham Stamp Office, attaching a copy of the original land transaction return and payment.

If the effect of the return is that less tax is payable in respect of a transaction than has already been paid, the amount overpaid will be repaid on a claim by the purchaser, together with interest as from the date of payment.

### 7.9. Assessments

(Paragraphs 28 to 32 Schedule 10)

HMRC have power to make assessments if they discover that:

- a) an amount of tax that ought to be assessed has not been assessed; or
- b) an assessment to tax is or has become insufficient; or
- c) relief has been given that is or has become excessive

and may also make assessments to recover excessive repayments of tax.

Where the purchaser has delivered a land transaction return in respect of the transaction HMRC may make a discovery assessment only if there has been fraud or negligence by the purchaser or a partner of his or a person acting on his behalf, or in certain circumstances where HMRC could not previously have been expected to be aware of the situation.<sup>873</sup> Notice of an assessment must be served on the purchaser in the appropriate form.

#### 7.9.1. Discovery assessments – effect of *Langham v. Veltema*

The question of when HMRC can be expected to be aware of a situation was considered in the direct tax case of *Langham v. Veltema*<sup>874</sup> the facts of which were as follows:

A company director was liable to income tax on the value of a house. In his 1997/98 tax return, which he submitted in July 1998, he submitted a valuation of £100,000. In September 1998 HMRC advised him that his return had been

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<sup>871</sup> Regulation 28 Stamp Duty Land Tax (Administration) Regulations 2003 (SI 2003/2837)

<sup>872</sup> Even if the purchaser no longer owns the land.

<sup>873</sup> Paragraph 30 Schedule 10

<sup>874</sup> [2004] EWCA Civ. 193, [2004] STC 544 applied in *McQueen v. HMRC* [2007] SSCD 457 (Sp C 601).