



Alert

November 2008

Tax Strategies



Stamp Duty Land Tax – Time to Act

The Stamp Duty Land Tax (SDLT) rules relating to leases are particularly complex and amongst those rules are some which will only apply once a lease becomes five years old. With SDLT celebrating its fifth birthday on 1 December 2008 some of these rules will soon start to bite and it is worth reviewing the occasions on which you may need to re-notify HM Revenue & Customs of your lease, or even pay additional SDLT. Failure to do so will result in significant interest and penalty charges arising. These rules apply not only to the original tenant, but also to a tenant who acquired an SDLT lease from a previous tenant.

Holding over

If you start "holding over" a lease which was granted under the SDLT rules the lease is deemed to grow by a year on the day you commence holding over. If further SDLT becomes payable you must submit a return and pay that additional tax within 30 days. So, for example, if you were granted a five year lease on 15 December 2003 and continue to occupy the property under the old lease after 15 December 2008 then even if you are negotiating a new lease the old lease will be deemed to have become a six year lease. If, having recalculated the tax liability, there is more tax to pay, you must submit a return and pay that tax by 14 January 2009. In fact this rule applies to all SDLT leases and not just to leases once they reach five years old so some short leases may already be notifiable.

Action point: If you start holding over a lease granted since December 2003 remember to check whether a further return is needed and additional SDLT payable.

Estimated rent

The SDLT payable on a lease is based on the rent payable for each of the first five years. In some cases the rent payable for these years is not known when the lease is granted because, for example, the lease charges a

turnover rent or is subject to review. In such cases the original SDLT calculation is based on an estimate of the rent payable. The SDLT must then be recalculated using the actual rental figures at the earlier of the rent ceasing to be uncertain (ie following the rent review or determination of turnover), or the end of the first five years of the lease. If further tax is payable another return must be submitted within 30 days and the additional tax paid. On the other hand, if the original rent estimates were excessive it is possible to reclaim the overpaid tax.

Action point: If original SDLT was based on estimated rental figures remember to recalculate the SDLT payable once the rental figures become known, or at least after five years.

Abnormal rent increases

Finally, if there is a large rent increase after the first five years of the lease additional SDLT may become payable if the increase is deemed to be an "abnormal rent increase" or "ARI". The method of calculating whether an increase is an ARI is complex but generally the rent can increase by 20% per annum since the last increase without being treated as abnormal. The rules are amended where the lease has charged stepped or variable rents during the first five years, where there has been a variation of the lease during the first five years or where there has already been a review that has been caught under the ARI rules. The Government is known to be reconsidering these provisions because they are too complex for even HMRC to understand and changes may be introduced in due course. In the meantime they remain law and if you have any sizeable rent reviews coming up it is worth taking advice on the threshold at which the ARI provisions will apply.

Action point: If a sizeable rent review is planned outside the first five years of an SDLT lease check whether the ARI provisions will result in a further SDLT charge.

In each of these cases (even where Hammonds provided SDLT or property advice in relation to the original lease) we do not hold the necessary information to be able to make a return on your behalf or to remind you of the need to pay any additional SDLT. You will need to let us know if you think you will be caught by any of these rules and we can then request the necessary information from you to work out if there is a liability or requirement to make a return.

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