

Stamp duty land tax changes to the filing and payment process consultation published on 10 August 2016.

Response by the Stamp Taxes Practitioners Group

The Stamp Taxes Practitioners Group (STPG) is the leading professional forum for stamp taxes practitioners consisting of 183 members. Members are drawn from the legal, accountancy and surveying professions and include practitioners in the fields of tax, real estate and conveyancing. The STPG welcome the opportunity to respond to the consultation “Stamp duty land tax: changes to the filing and payment process”; we have been involved in a face to face meeting with HMRC officials.

Businesses investing in property (either through development or as an investment) are generally much more complex than the straightforward purchases of ordinary houses and flats which form the bulk of the transactions which are processed by HMRC. The consultation document notes (at 2.1) that most returns are currently filed within a 14 day window. We have concerns about the minority of transactions which are complex and for which there could be real problems in complying with the reduced window.

Our comments therefore focus on three areas of concern. These are within the scope of Question 1 of the consultation. In each case we make a proposal which would allow the policy to go ahead with a relatively smooth implementation for commercial as well as residential transactions.

1) The filing period should be 10 working days rather than 14 calendar days

We appreciate that the decision to reduce the filing and payment period for land transactions subject to SDLT to two weeks from the existing 30 days has been taken and that this consultation is therefore about the practicalities of implementation rather than the principle of reducing the period.

Land transactions can and do occur on any working day of the year and the timing is determined by commercial considerations. This is in contrast to most taxes where there is a fixed schedule of annual, quarterly or monthly dates where tax becomes due. This means that it would be unreasonable to require the filing and payment process for SDLT to occur within 14 calendar days irrespective of the incidence of Bank Holidays – especially around Christmas and Easter. It seems doubtful that HMRC could interpret such a statutory provision flexibly. We therefore propose that the statutory rule should be formulated in terms of working days rather than calendar days. A deadline of ten working days (assuming that working days are Monday to Friday) would solve this problem. It would have a very small impact on the flow of tax payments compared with 14 calendar days. And it would make only a negligible change to the desired acceleration of tax payments between financial years as published in the Budget arithmetic.

2) Applications for deferment of uncertain future tax liabilities should be embedded in the land transaction return without requiring an exchange of correspondence before filing

Where part of the consideration for a land transaction is contingent or uncertain (for example an overage payment), and the additional consideration may not become due until at least six months after the effective date of the transaction, then the additional SDLT payment may be deferred until the uncertainty is resolved or the contingency arises. Such a deferment must be applied for in correspondence with HMRC and this allows HMRC to monitor potential future tax liabilities. The current 30 day filing period means that deferment applications can be made before filing with a reasonable chance that HMRC can respond in time for the taxpayer to take account of that response in self-assessing the correct amount of tax. A two week timetable makes this impossible in practice. The details of overage and similar provisions are often agreed only shortly before land transactions proceed so pre-preparation of a deferment application is not usually an option.

We propose that there should be a tick box on the return to allow the taxpayer to record a self-assessment that the deferment rules apply and that this has been taken into account in the tax calculation. To the extent that the deferment regulations require more detail to be spelt out, this should be by means of follow-up correspondence within the existing 30 day timetable. The follow-up correspondence could itself be electronic. The point that we are making is that the details of an overage provision are not needed in order to calculate the current tax liability so the requirement to provide ancillary information need not be forced into the accelerated pay and file timetable.

3) Additional information not required for tax purposes should be excluded from the tax return

The Valuation Office Agency (VOA) has access to SDLT return information under the statutory rules. This assists it in its role to provide valuations for various purposes. We have no objection to this. What has long been a problem for taxpayers is that some of the information required in the current land transaction return is irrelevant to the calculation of SDLT. In particular, details of sub-leases to the property interest being acquired must be provided. These details can be very onerous to provide for some commercial deals. An example would be the purchase of a shopping centre. SDLT would be liable on the price paid for the freehold or headlease of the land containing the shopping centre. But the tax calculation does not depend on the details of sub-leases to the retail tenants of the various units.

The aim of the policy is to streamline tax filing and payment and this is understood and generally acceptable. But the provision of non-tax information should not be allowed to undermine the tax compliance process. We propose that the reduction in the filing period should be taken as the right timing to de-couple the information flow needed for tax purposes from non-tax information needs. We understand that the VOA is conducting a review relating to whether it requires non-tax information. And we also understand that Revenue Scotland does not collect the additional information in relation to its administration of the Land and Buildings Transaction Tax (LBTT) so the VOA no longer has this source of information on Scottish property.

The VOA may or may not have a good case for the collection of non-tax information in this area. But, we suggest, the tax returns should only be used for tax-relevant information when the deadlines are changed.

7 October 2016