

# SDLT – A Practical Issues Update

**W**e are rapidly approaching the third anniversary of the appointed day for SDLT: 1 December 2006. Practitioners will be aware that SDLT was intended to be significantly different from stamp duty; and so it has proved. Many changes have been made over these three years and more can be expected. Mercifully, many have been aimed at removing glitches. Property transactions are often high-value transactions involving complex legal concepts and the tax incorporates many of these concepts into its structure.

An especially positive facet of the SDLT regime is the helpful approach taken by Stamp Taxes and, in particular, the Deputy Director Stamp Taxes Policy, Crispin Taylor, whose presentation to the first conference held by the Stamp Taxes Practitioners' Group (STPG) on 27 September was enlightening and informative.

The conference was ably chaired by Matthew Hutton and focussed on practical

*Lakshmi Narain, Director, Tax Services at Baker Tilly and Marc Selby, Partner, Laytons Solicitors, update us on the practical issues of SDLT*

- Progress is also being made on the introduction of online filing of SDLT returns which, it was envisaged, would generate an online certificate to facilitate Land Registry applications.

For practitioners, the major problem is applying legislation to real-life transactions. STPG members submitted a number of interesting questions in case-study format to Stamp Taxes and an outline of the questions and responses received is set out below. Matthew Hutton commented, and Crispin agreed, that an appropriate question would identify uncertainties in the legislation which would warrant clarification whilst not facilitating tax avoidance.

SDLT chargeable on the contingent consideration. In response to the question as to whether such a cessation of liability could be implied, Crispin replied that there would be greater certainty if the contract provided for an express release or discharge.

## Linked transactions

If there was a grant of three successive leases of the same property to the same tenant where the second lease was granted pursuant to an option in the first, and the third lease was granted pursuant to an option in the second, would the second and third leases be linked with the first if, before granting the second lease, the landlord who had granted the first lease sold his interest to an unconnected party? It was confirmed that, in this case, the second and third leases would not be linked to the first. However, Crispin did not see why the third lease would not be linked with the second.

There were some supplementary questions regarding sub-sales and, in particular, the construction of the transfer of rights provisions in FA 2003, s 45, which Crispin refused to answer. However, one of the questions concerned the purchase of a house for £900,000 which was sub-sold for £1 million to the original purchaser's brother in circumstances where the original contract was not substantially performed until completion of the sub-sale. Crispin confirmed that, notwithstanding that the original purchaser and sub-purchaser, who were brothers, were connected within the meaning of s 45(6), the consideration of £900,000 payable by the original purchaser would not be aggregated for SDLT purposes with the consideration of £1 million payable by

*Many changes [to SDLT] have been made and more can be expected. Mercifully, many have been aimed at removing glitches*

issues. It is clear from the contents of the conference that the key planning point is, arguably, to avoid the pitfalls.

Crispin noted that there are several outstanding projects.

- The new draft chapter on leases in the SDLT Manual, which had been prepared by John Neale before his departure from Stamp Taxes Policy at the end of July, is nearly complete. The Scottish sections of the leases chapter would, however, take longer.
- The preparation of a new partnerships chapter in the SDLT Manual, incorporating guidance on the important amendments to the legislation on SDLT and partnerships introduced in FA 2006, is under way.

## Deferral applications

Where deferral is granted – for example, in respect of overage payable on a future contingency – would the deferral applicant remain liable for SDLT on the contingent consideration if the property were disposed of to a new owner before the contingent consideration fell due?

The position would depend on the terms of the contract between the original vendor and the original purchaser. If the contract provided that, in the event of the original purchaser selling the land, it would cease to be liable and the successor in title would then become liable for the contingent consideration, the original purchaser would cease to be liable for any

the sub-purchaser, so that the sub-purchaser's SDLT liability would be based on a consideration of £1 million.

A question was outlined where a vendor owned a house which had been converted into three flats, for which he had accepted offers of £100,000 each from three individuals, all of whom were siblings. The transaction with one of the siblings was delayed because of a problem with his mortgage but, in the meantime, the vendor proceeded with the sales to the other two siblings. The sales to those two siblings would appear to be linked, in which event they would each be liable for SDLT at 1%. However, what would the position be if and when the transaction with the third sibling proceeded after he ultimately obtained his mortgage offer?

Crispin's answer was that, if the transaction with the third sibling was linked with those in favour of the other two, there was no reason why the SDLT liability in respect of the sale of the first two flats should not be revisited in accordance with FA 2003, s 81A.

As a follow up, Crispin was asked what the position would be if the first two purchasers did not know about the sale to the third sibling and could not find out, to which Crispin responded that these factors would not, of themselves, relieve the first two siblings from further liability, although they may have a reasonable excuse, which would fully mitigate the possibility of any penalty being imposed.

### Exchanges

For those who find such matters fascinating, Crispin was presented with a conundrum. The scenario outlined was the exchange of a life interest in Whiteacre by the individual life tenant for a reversionary interest in Blackacre owned by a company with which the life tenant was connected where the life tenant received from the company a cash payment of £1,000 as well as the equitable interest in Blackacre. (Clearly, this was no common or garden conveyancing transaction!)

As regards the acquisition of the life interest by the company, there were two provisions which potentially applied. Under FA 2003, s 53, the acquisition would be chargeable to SDLT at not less than the market value of the subject matter of the transaction (that is, the life interest acquired by the company). However, under FA 2003, Sch 4, para 5(4), where there was an exchange of interests which were not major interests, the chargeable consideration for each acquisition was the appropriate proportion of the amount or value of any chargeable consideration



Lakshmi Narain

other than the disposal or disposals given for the acquisitions. In other words, if para 5(4) applied, the chargeable consideration provided by the company for acquiring the life interest would include only the cash consideration of £1,000 which it paid, and one should ignore the value of the equitable interest which it provided by way of exchange. Did the market value charge under s 53 prevail over the actual consideration charge in para 5(4)? Crispin's answer was that s 53 imposed a stand-alone charge, notwithstanding that para 5(4) might give a different result. In Crispin's view s 53, which imposed a market value charge in respect of a transaction with a connected company, would take precedence over the charge by reference to actual consideration in para 5(4).

In a case where property was contributed to a partnership of which one of the partners was a company which was connected with the transferor, Crispin considered that the provisions in FA 2003, Sch 15 would take precedence over s 53.

Matthew Hutton commented that, in the article on exchanges in *Technical Newsletter*, Issue 2, the view was expressed that where a second transaction had been taken into account in making the decision to enter into the first transaction, the transactions would be considered to be entered into 'in consideration of' each other, and would therefore be regarded as an exchange. Matthew thought that this statement went too far. A delegate asked whether the decision in *Glenrothes Development Corporation v IRC* [1994] STC 74 to the effect that 'consideration' involved the principle of reciprocity or mutuality of contractual obligations,



Marc Selby

would be relevant. Crispin thought that the *Glenrothes* case was helpful but commented that this was a difficult area and suggested that the principle in that case might not apply in all situations.

### Exchanges and linked transactions

An interesting issue is the application of the linked transactions provisions to Sch 4, para 5, which concerned exchanges, and the nature of transactions which could be characterised as falling within the exchange provisions. Crispin made these responses.

- It was Stamp Taxes' view that, where the parties to an exchange were connected, the linking provisions would apply so that the rate of SDLT should be determined by aggregating the value of the consideration provided by each party.
- In a case where there were two transactions where the second was entered into in consideration of the first, the linking provisions would only apply if the parties comprised the same vendor and the same purchaser, or persons connected with them, at the time when the first, as well as the second, transaction took place. Hence, if such transactions took place between parties who were married after the first transaction but before the second transaction, but who were otherwise unconnected, the linking provisions would not apply.
- An exchange could involve a tripartite series of transactions, such as A conveying to B, B conveying to C and C conveying to A, but could not arise in respect of linear transactions - for example, where there was a sale from A to B, subject to B granting a lease to C, unless possibly C was connected with A.

### Linked leases

The basic facts were that a lease was granted in March 2005 for a term of 10 years at a rent of £70,000 per annum and, following negotiations between the landlord and the tenant which commenced some 18 months after the lease was granted, the lease was varied so that, in return for a premium paid by the landlord, the rent was increased to £85,000 with effect from the beginning of the third year of the term. For SDLT purposes this increase in rent is treated as the grant of a new lease for the amount of the increased rent (FA 2003, Sch 17A, para 13). Was this deemed new lease linked with the original lease? The problem was that Example 3 in paragraph 12210a of the leases chapter of the SDLT Manual indicated that such a deemed lease would be linked with the original lease and this conflicted with the guidance in Practitioners' Newsletter, Issue 4, in which, in an article headed 'Leases', it was stated that it was very unlikely that successive leases on the same property would be linked just because they are successive and that, in order for leases to be linked, there would have to be some form of arrangement, such as an agreement for all or some of the successive leases at the grant of the first.

Happily, Crispin acknowledged that the example in the leases chapter referred to above was incorrect and indicated that he would arrange for this to be corrected in the proposed new leases chapter. He added that the above guidance in Practitioners' Newsletter, Issue 4, was, in his view, correct.

### Variations of leases

There was a question involving variations to two leases, each of adjoining land, which was required in order to adjust the boundaries, which did not accord with the lease plans. The areas in question were worth less than £1,000. If the leases were varied so that the new areas of land were treated as an addition to the original demise, the variations would take effect as implied surrenders and re-grants. Could the parties to the transaction rely on FA 2003, Sch 17A, para 16 (surrender of existing lease in return for new lease) so that no charge to SDLT would arise? Crispin advised that para 16 could apply in circumstances where there was a partial surrender and a consequential re-grant and, accordingly, that provision should relieve the parties from liability to SDLT in this case.

### Charities

Charities need to take particular care as regards the relief available to them. The

question presented concerned the purchase by a registered charity of a large site on which it was proposing to build a new church hall. The problem was that the new church hall was to be built on a part of the site which had only a quarter of the value of the whole site and the Charity was intending to dispose of the remainder of the site for commercial development. The charities relief provisions in FA 2003, Sch 8 permit the relief to be claimed if the property being acquired is to be used in furtherance of the charitable purposes of the purchaser, or of another charity, or as an investment from which the profits are applied to the charitable purposes of the purchaser. It appeared that these conditions would not be satisfied if the whole site was acquired under a single contract but could it split the purchase into two contracts with two transfers, one of the land for the new church hall, which would be eligible for charities relief, the other for the remainder of the site, which might not be so eligible?

Crispin saw no reason why, in this case, the charity could not enter into two transactions, with one of them qualifying for charities relief and the other not. He added that there was no general provision in the legislation deeming two transactions to be one. It was noted that this solution could not be utilised unless it was possible to identify a particular area within a development site which would be used for a charitable purpose. Crispin agreed and added that charities relief was also not available where land was being acquired by joint purchasers, unless all of them were charities. Crispin intimated that he was aware of problems facing charities in these circumstances and would keep the matter under review.

#### STAMP TAXES PRACTITIONERS' GROUP

The Stamp Taxes Practitioners' Group (STPG) has been in existence for over two years and its membership is open to practitioners who specialise, to a greater or lesser extent, in stamp taxes. Its members meet bi-monthly and most, although by no means all, of the technical discussions concern SDLT. The STPG is looking at ways it can disseminate the content of the fruitful meetings with Stamp Taxes more widely. If you are interested in joining, Marc can be contacted on 020 7842 8000 or by e-mail [marc.selby@laytons.com](mailto:marc.selby@laytons.com).

### Discovery

Where a taxpayer was proposing to file a land transaction return in a case where the tax liability was dependent on a valuation or an interpretation of the legislation with which HMRC might disagree, was it possible to avoid the risk of a discovery assessment being raised after the nine-month enquiry window had expired and, if so, how?

It was noted that Stamp Taxes are hoping to publish guidance shortly on the application of *Langham v Veltema* to SDLT transactions. Crispin said that Statement of Practice SP1/2006 would apply in respect of commercial property transactions and added that the only reason why Stamp Taxes Policy had decided not to adopt SP1/2006 was that it stipulated that taxpayers could protect themselves by obtaining a valuation from an independent and suitably qualified valuer and by incorporating a statement to that effect in their return. This was unrealistic in the case of residential property transactions. However, in the case of commercial property transactions, a taxpayer could protect himself from a discovery assessment by obtaining such a valuation.

As to how a taxpayer should make a disclosure with a view to protecting itself against the risk of a discovery assessment, Crispin's preference was for this to be effected by a letter to the Manchester Stamp Office quoting the unique taxpayer's reference number and not to enclose a letter with the return sent to Netherton. However, he stressed that advisers should not do this as a matter of course.

### Code of Practice 10

Finally, a delegate asked whether there was any intention for the facility for obtaining rulings under Code of Practice 10 to be withdrawn. Crispin confirmed that there was no current intention to withdraw this facility but added that the issue was one of resources and that the position might be reviewed in the future. Crispin added that the Complex Transactions Unit in Manchester, which dealt with such applications, was not overworked at present.

---

Lakshmi Narain is the Chairman and Marc Selby is the Secretary of the STPG. The technical content of this article has been agreed by Crispin Taylor for publication.