

## **Stamp Duty Land Tax Avoidance Schemes**

At the time of writing, our assessment is that none of the avoidance schemes that we have fully analysed has the effect the promoters claim – either because the general SDLT provisions do not apply in that way or because the targeted anti-avoidance rule operates to neutralise any tax advantage.

### **Challenging avoidance**

We are now challenging all schemes which we have identified as being in use. These include where:

- a sub-sale is combined with the subsequent distribution of the property in the form of a dividend in specie
- a sub-sale is combined with a subsequent claim to alternative finance relief
- it is claimed that combining a sub-sale with a transaction involving a partnership reduces the consideration chargeable to SDLT by virtue of the special partnership computational rules
- a sub-sale is combined with a transfer by deed of gift or assignment.

We are starting a process of comparing transactions reported to the land registry with land transaction returns made to HMRC. Where there is a discrepancy and we hold a return we will risk assess that return with a view to undertaking a compliance check. HMRC will also consider making a 'discovery assessment' for the cases where a return has been submitted and the 9 month enquiry window has passed if the return and any accompanying documents do not fully disclose the details of the scheme used. Where a transaction has been notified to HM Land Registry but no SDLT return has been submitted, purchasers face the prospect of receiving a determination of the SDLT that HMRC believes to have been under-declared.

We will also be using the full range of HMRC information powers to identify and challenge promoters and scheme users who fail to notify us of the marketing or use of disclosable schemes.

### **Promoter disclosures**

We are aware of a number of cases where it has been claimed that the issue of a Scheme Reference Number (SRN) under the disclosure regime has been a sign that HMRC accepts the scheme has the effect claimed by the promoter. That is simply not true. The issue of a SRN is merely confirmation that HMRC has received the disclosure and is now aware that the scheme is being marketed.

**Time limits**

The legislation governing the enquiry process makes it clear that the period for opening enquiries runs from the later of the filing date, the date the return is delivered and the date a return is amended. It has come to our attention that some scheme users (or their advisers) are submitting a letter of disclosure giving details of transactions entered into but without submitting an SDLT return in relation to those transactions. We do not accept that, on its own

- the submission of a letter of disclosure, or
- a notification by a promoter or a user of a scheme

establishes a time limit for an HMRC enquiry.

Unless a user makes a return, recovery of the tax by assessment is currently possible up to 6 years after the effective date of the transaction (up to 21 years where there is fraud or negligence).

**Penalties**

From 1 April 2010 the penalty regime at Schedule 24 Finance Act 2007 was extended to stamp taxes by Schedule 40 Finance Act 2008. Whilst HMRC acknowledges that people will sometimes make mistakes, we will relentlessly pursue those who deliberately bend or break the rules – including, where appropriate, seeking penalties.