Reduction in the time to file a Stamp Duty Land Tax return and pay tax due

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The time limit to file a Stamp Duty Land Tax (SDLT) return and pay the tax due will reduce from 30 days to 14 days from 1 March 2019. New regulations make consequential amendments and changes to the return particularly for a deferment application

At Autumn Budget 2017 the government confirmed that the time limit for making a SDLT return and paying tax would be reduced to 14 days and announced that this would apply to transactions with an effective date on or after 1 March 2019.

The changes to legislation and regulations

Finance Act 2019 includes the primary legislative amendments to Finance Act 2003 to implement the changes. In addition, following a brief consultation, the Stamp Duty Land Tax (Administration) (Amendment) Regulations 2018 were laid on 10 December 2018.

The regulations relate to the process to make a SDLT return and pay the tax following an application for deferment of SDLT under FA 2003 section 90. An application to defer SDLT can be made when the purchase price of the land is uncertain or contingent, most commonly where the price is to be adjusted on the obtaining of planning permission. Notwithstanding the general reduction to 14 days, the regulations retain the 30 days' deadline within which a deferment application is to be made, a welcome relaxation as it recognises the practical difficulties in making a deferment application where typically the final agreement of the terms may not occur until close to completion.

Question five of the new form SDLT4 now asks ‘Are you applying for deferment’ rather than ‘Have you agreed with HMRC that you will pay on a deferred basis?

What happens when, following a deferment application, the uncertainty ceases or the contingency is satisfied?

The amendments provide that a purchaser is required to make a further return and pay SDLT within 30 days provided that the transaction was notifiable when the application was made. However, if the transaction was *not* notifiable when the deferment application was made, the purchaser is required to make a return and pay SDLT within 14 days of the relevant date rather than the 30 days extended to a previously-notifiable transaction.

Why is this important?

A transaction may not be notifiable (being below the £40,000 chargeable consideration threshold) because, for instance, a property is transferred free or at a token initial sum either because as it stands it has little value or even at a negative value (being costly to maintain and insure or due to remediation costs as a result of contamination). However, the vendor feels that there is a prospect of future value and so a clawback (overage) provision is included. When a contingency or uncertainty is removed (on say, the grant of planning permission sometime in the future) the practical difficulties in making a return/further return will be the same particularly in terms of valuation. Therefore, in principle there appears to be little or no justification for a shorter time limit of 14 days where the transaction was not initially notifiable. However, it is understood that in practice it is not possible to have two different time limits for the same form (the SDLT1).

A solution?

In our response we noted that a pragmatic solution for transactions that are not initially notifiable when the deferment application is made might be to submit a voluntary SDLT, the aim being to secure the longer 30-day period to submit a return if planning permission is eventually granted.

We suggested that the regulations could be amended to facilitate this solution and that HMRC’s guidance should highlight the benefits of making a voluntary return in

these circumstances and set out the wider consequences of doing so including such matters as HMRC’s powers to make an enquiry, issue a determination or discovery assessment.

Although the regulations have now been laid (without that amendment), at the time of writing we await the government’s response to the consultation feedback.