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Stamp Duty Land Tax : Law and Practice

by

Patrick Cannon
Barrister, 24 Old Buildings

Chapter 1

LIABILITY AND PAYMENT

1.1 Liability to Pay SDLT

The purchaser is liable to pay the SDLT in respect of a chargeable transaction: s 85(1) FA 2003. Joint purchasers are jointly and severally liable to pay the SDLT: s 103(2)(c) FA 2003. A 'purchaser' is defined as the person acquiring the subject matter of the transaction: s 43(4) FA 2003. Partners who are partners at the effective date of the transaction (but not any person who becomes a partner afterwards) are jointly and severally liable to pay the SDLT in respect of purchases of chargeable interests by the partnership: para 6(2) and 7(1), (2) and (2A) Sch 15 FA 2003. SDLT may be recovered from any one or more of the trustees of a settlement who were trustees at the effective date of the transaction or who subsequently became a trustee: para 5(1) (3) Sch 16 FA 2003.

1.2 Payment of SDLT

SDLT payable in respect of a land transaction must be paid at the same time as the land transaction return is made: s 86(1) FA 2003. Any tax payable as the result of the withdrawal of either group relief, reconstruction or acquisition relief and charities relief must be paid at the same time as the return is made in respect of the withdrawal: s 86(2) FA 2003 and see 12 Groups of Companies and 13 Company Reorganisations

1.3 Deferring Payment of SDLT

The provisions mentioned in 1.2 are subject to any application to defer payment of tax in the case of contingent or uncertain consideration under s 90 FA 2003 (see 32 Chargeable Consideration) or to postpone payment of tax pending an appeal under paras 39 and 40 Sch 10 FA 2003 (see 7 Appeals)

1.4 Collection and Recovery of SDLT

1.4.1 Tax Demands and Distraint

The collection and recovery of SDLT including any penalties and interest is governed by s 91 and Sch 12 FA 2003. A collector may demand the tax due and payable from the person liable to pay it and shall issue a receipt if requested upon payment of the tax. In England, Wales and Northern Ireland if a person neglects or refuses to pay the sum charged the collector may distrain upon the goods and chattels of the person in default. If there is reasonable ground for believing that a person is neglecting or refusing to pay the collector may be authorised by a warrant issued by a justice of the peace to break open in the daytime any house or premises for the purpose of levying such distress. The goods and chattels must be kept for five days after which they may be sold at public auction for payment of the tax due plus all costs and charges. In Scotland a summary warrant may be granted by the sheriff once the tax has been demanded and 14 days have passed without payment of the amount. The warrant may authorise recovery of the unpaid amount by attachment, an earnings arrestment and an arrestment and action of furthcoming or sale.

1.4.2 Court Proceedings

Unpaid tax not exceeding £2,000 is recoverable in summary proceedings before a magistrates' court in England, Wales and Northern Ireland brought within one year from the time when the matter complained of arose. Tax due and payable may also be sued for and recovered in a county court, sheriff court, the High Court or the Court of Session. A certificate of an officer of the Board of Inland Revenue that tax is due and payable and that to the best of his knowledge and belief payment of the tax has not been made is sufficient evidence that the sum mentioned in the certificate is unpaid and is due to the Crown.

1.5 Methods of Payment

Where payment to the Inland Revenue is made by cheque and the cheque is paid on its first presentation to the bank on which it is drawn, the payment is treated as made on the day the cheque was received by the Inland Revenue: s 92 FA 2003. When the cheque is received on a day that IR Stamp Taxes is closed the cheque is treated as having been received on the first day that the office was closed. A covering letter is required for post-dated cheques which are generally only acceptable for payment of tax by the due date. Payment of SDLT can also be made by BACS Direct Credit, internet or telephone banking, CHAPS or by debit card over the internet, bank giro or via the Post Office.