

SDLT Tech Forum
Notes of Meeting on 24 November 2014
100 Parliament Street, London, SW1A 2BQ

(Please note action points and comments are at the back of this document, see appendix 1)

Attendees

Andy Bedworth [AB] (HMRC)	Keith Brown [KB] (HMRC)
Jon Cannon [JC] (HMRC)	Ion Fletcher [IF](BPF)
Gordon Keenay [GK](STPG)	Craig Leslie [CL](STPG)
Gerald Moran [GM](STPG)	Nigel Popplewell [NP](LS)
Jeremy Schryber [JSc](HMRC)	Marc Selby [MS](CIOT)
Sheila Southwick [SSo] (HMRC) (note taker)	David Westgate [DW](BPF)
Kate Willis [KW](CIOT)	Geoff Yapp [GY] (HMRC) (chair)

Apologies

Sally Gwalchmai [SG] (HMRC)	Jane Ewart [JE](HMRC)
Pauline Hawkes-Bunyan [PHB](BPF)	Joyce Randall [JR](HMRC)
Gary Richards [GR](LS)	

Introductions

Introductions were made within the group.

Terms of Reference

A draft terms of reference (TOR) was circulated within the group and discussed.

It was agreed SS would arrange for the meetings to be published on the website (these would be displayed along with the SDLT WTSG minutes.)

AP1 SS would provide support for the group, take and share the minutes before arranging for their publication on the website

The group were keen to change the TOR 1.3 to include 'to raise, discuss and resolve significant issues in relation to SDLT'

The group also agreed agenda items would be put forward with a covering note/sentence providing an explanation of why the item should be discussed.

It was also agreed SS would issue the minutes within 10 working days of each meeting and members of the group will have an opportunity to comment on the minutes.

AP2 SS to issue the minutes within 10 working days

SDLT treatment of Trees

HMRC confirmed for SDLT it had not changed its interpretation of treatment of trees: if a tree is planted into land it is part of the land.

Land pooling

The group asked for certainty about land pooling, following Michael Lyttle's attendance at a conference some time ago. MS had also written an article about land pooling.

Michael Lyttle had referred to Jenkins and Brown for Capital Gains Tax (CGT) where there is no disposal for CGT – if it is a bare trust you get back what you put in.

The group asked whether SDLT treatment is in line with CGT on this issue? The Group also referred to a previous case before Jenkins and Brown which it felt gives a clearer steer.

AP3 JC will update the next meeting on how stamps policy plan to consider this matter.

AP4 NP will sort out his information on land pooling and share this with the group

Residential definitions

NP had produced a paper on residential definitions which KB has forwarded to Solicitors office (Sols) for advice. It is expected Sols advice will be generic and once received Stamps will then want to tease out the principles. The Group agreed to draft a paper which would include the key principles they wanted HMRC to consider.

The Group wanted to understand 'at what point does something becomes residential' for example if you are buying off plan, the purpose of the property is a marketing point only.

When planning permission can be obtained for residential use? Does this become a dwelling because it has been advertised as a dwelling? The group wanted clarity between the intention to make a property a residential dwelling and the potential to make a property a residential dwelling?

If a building has been used as a hotel until exchange and it becomes a residence, when did it change?

AP5 NP has been working on this and will share his draft information with the group.

DOTAS

The Step B list has not been updated to include some new reliefs. The group explained that this was a real commercial issue because technical compliance with DOTAS has assumed greater commercial significance for advisers and lenders including the interaction with APNs. CL suggested just listing the exceptions, to avoid the need for regularly updating the Step B list. This might be worded as: 'anything subject to relief or exception, then no further action is required'

Firms cannot be sure what the answer is and they would like more certainty on disclosure, the group wondered whether HMRC could circulate a list? The group also queried:-

- Diplomatic exemption
- APN regime
- SRN??

AP6 AB agreed to look through Step B and identify what information should be in there. From this he will produce a draft list to share with the Group and ask them to add to it. This list can then be used to produce and publish an update to the current Step B list.

Payment/Penalty Notice Regimes

There is no intention for the new penalty notice regime to be applied to transactions before April 2010 based solely on the inclusion of numbers in correspondence on disclosure at the time. As previously stated, these reference numbers are not considered to be SRN as defined by the DOTAS regs and so do not satisfy the APN gateway test. AB reminded the Group that scheme users may face APN for old schemes if one of the other gateway tests is satisfied, such as being a follower to a settled lead case. The group also pointed out that conveyancers might not readily access the APN guidance unless there are clear links from Stamp Taxes.

HMRC want a consistent single message for its customers and agents and so did not want to publish guidance in various locations online. AB confirmed Stamps is not intending to publish SDLT specific guidance on APN on the Stamps website, but will aim to provide links to the full updated APN guidance once all information has migrated to GOV.UK. He also advised the Group that Stamps can check numbers that were given to agents against a DOTAS database, to check that they were validly issued. Stamp Office would need a written request to consider such a check.

The Group also pointed out there was nothing in ATED guidance about DOTAS and asked whether there should there be a link from SDLT to APN guidance.

AP7 AB after transition to GOV.UK AB will arrange a link to better guidance.

Pre completion transactions

JS took this opportunity to explain to the group that he would be leaving Stamps from 3 December 2014, and the group thanked him for his support and assistance.

Jeremy, explained that he has been working on new guidance which included examples for subsale and different plots, and the SDLTM would be updated by mid-January 2015.

Contracts and substantial performance (s44/45c/55 and Sch 2A guidance)

The group wanted the guidance to make clear which rules a transaction comes under and what the different outcomes are. This distinction takes on greater importance now that the PCT rules require immediate claims.

JC offered to amend the guidance, if the Group could provide more scenarios and real live situations for which the current guidance is considered lacking.

JS said it may be helpful to capture what is quoted within 'Hansard', and as a result of that Stamps can think about the approach to take.

AP8 JC subject to receiving scenarios from the group, stamp policy will look to amend guidance or if necessary revert to the next meeting.

Payments under the Land Compensation Act 1973

This subject was discussed and AB agreed that these are non-taxable as with the 1961 Act and that the guidance needed updating.

AP9 AB will arrange for an update to the guidance

LBTT transition rules – guidance

KB informed the Group, he is working on this guidance and it should be available shortly.

AOB

77 claims

The Group raised the recent guidance from HMRC on the treatment of loan notes and debt when considering claims to s77 relief for SD. Jane Ewart (JE) is investigating this issue within Stamps.

The Group drew attention to the meanings of funded debt, bank debt and non-marketable funded debt and agreed that if Stamps can be clearer on these issues it would ease work levels and provide more certainty for business. Stamps also agreed to look at what other taxes did in respect of these debts to consider if a broader scope is required to reach an HMRC view.

The Group suggested information about categories of loans and debts which could be taken as not relevant to s77 claims should be published as soon as possible and JC agreed to discuss this with JE

The Group said there had been long delays in some SD cases, which was causing difficulties for businesses.

AB recognised that there had been an increase in more complex SD cases and that this was leading to delays in some instances. He told the Group that he had moved to increase the staff resources dedicated to SD but noted that this is a specialist area of work and there is no readily available pool of staff with knowledge or experience of s77 and s75 claims.

AP10 JC agreed to talk with CL about this, and the definitions of stock, marketable securities and non-linked security.

Stamp Duty on non UK shares – aligning the scope of stamp duty with the SDLT scope of chargeable securities might be a valuable simplification?

SDLT clearance applications

There have been long delays on some non-statutory business clearances and stakeholders are struggling to get a confirmation that the papers have been received by Stamps.

AB stated that more clearances were being referred to Sols and Stamps needed to think about managing expectations.

AB confirmed that answers should normally be provided within 28 days or where a referral for legal advice was required, the business should as a minimum expectation be informed of the potential longer period required. The Group pointed out that some investors from abroad would always apply for a clearance as it was part of the normal business process in some jurisdictions.

Surrender and re-grant provision for overlap relief

This relief in Schedule 17A para 9(1)(a), which prevents a double charge on rent which has already been taken into account for an SDLT charge, requires the demise to be substantially the same. There is long-standing published guidance that substantial performance of a contract for conveyance can be taken to be when 90% or more of the consideration has been paid. But there is no published guidance on the meaning of substantial in this different context. There are CGT rules or practices where overlaps of 80% or more are accepted and it is suggested that a figure of this level should be acceptable in the overlap relief context. NP has had a ruling on overlap relief, confirming there should be no double charging where a demise is extended – even though the old demise is not as much as 90% of the new demise, but general guidance is required.

After the meeting – GM informed SS that NP had a new lease of ALL the premises in two existing leases plus another floor (so the part of the new lease relating to existing leases was 82% of the total new demise). There is also a November 2013 ruling from Carol Read where the old lease was of 70% of a floor of a building and the new lease was of the entire floor.

AP11 DW will send JC a note regarding this issue and how it arises commercially.

Date of next meeting – 18 May 2015

Appendix 1

Action Points	November 2014 Meeting	For	Action By
AP1	SS would provide support for the group, take and share the minutes with the Group before arranging for their publication on the website.	SS	Feb 15
AP2	SS to issue the minutes within 10 working days	SS	19/12/15
AP3	JC will update the next meeting on how stamps policy plan to consider this matter.	JC	18/5/15
AP4	NP will sort out his information on land pooling and share this with the group.	NP	23/3/15
AP5	NP has been working on definitions for residential property and will share his draft information with the group.	NP	23/3/15
AP6	AB agreed to look through Step B and identify what information should be in there, from this he will produce a list and share this with the Group and ask them to add to it.	AB	2/2/15
AP7	AB after transition to GOV.UK AB will arrange a link to better guidance.	AB	16/2/15
AP8	JC subject to receiving scenarios from the group, stamp policy will look to amend guidance or if necessary revert to the next meeting.	JC	16/4/15
AP9	AB will arrange for an update to the guidance	AB	16/4/15
AP10	JC agreed to talk with CL about this, and the definitions of stock, marketable securities and non-linked security.	JC	16/2/15
AP11	DW will send JC a note regarding substantial performance and why 80-85% is more relevant.	DW	16/2/15