

## SDLT Tech Forum

### Notes of Meeting on 18 May 2015

100 Parliament Street, London, SW1A 2BQ @ 10.30am

A summary of action points can be found in Appendix 1

#### Attendees

Lisa Benosiglio (LB)	BDO
Ion Fletcher (IF)	British Property Federation
Chris Gill (CG)	Land Securities
Gordon Keenay (GK)	STPG
Craig Leslie (CL)	STPG
Gerald Moran (GM)	STPG - Hunters Solicitors
Sean Randall (SR)	STPG
Gary Richards (GR)	Law Society
Leigh Sayliss (LS)	Law Society
Marc Selby (MS)	CIOT
Brian Slater (BS)	CIOT
David Westgate (DW)	Derwent London
Colin McHardy (CM)	Revenue Scotland representative

#### HMRC

Jane Ewart (JEw)	Stamp Taxes
Geoff Yapp (GY)	Stamp Taxes
Andy Bedworth (AB)	Stamp Taxes
Peter Downing (PD)	Stamp Taxes
Jayne Eggar (JE)	Stamp Taxes

#### Apologies

Sally Gwalchmai	Stamp Taxes
Demi Abeynayake	Stamp Taxes
Kate Willis	CIOT

#### 1. Welcome

GY apologised that some agenda items had not been advanced as much as he would like. There were staff pressures due to key personnel leaving Stamps for a variety of reasons; including retirement and promotion to other roles; the Autumn statement changes; and the General Election preparations for different potential outcomes had created a great deal of work for stamp taxes staff. Some recruitment had been completed and others were in train, including resource from the substantial graduate recruit population which had commenced in HMRC in 2012. Hopefully the position will improve going forward. Peter Downing was introduced as the new head of Stamp Taxes Policy, replacing Jon Cannon.

#### 2. Terms of Reference (TOR) and Minutes

It was queried whether the S77 issue raised at the previous meeting had been taken forward. AB confirmed that it had. He said it was his intention to cover AP10 from the previous meeting more fully under AOB.

Progress on AP8 from meeting of 24 November 2014 (updating guidance on contracts and substantial performance) was queried. JEw said she was not aware of any progress Jon Cannon had made on this issue and no one could remember sending any information to Jon on the issue.

**Post meeting update - JEw checked with Jon Cannon who has not received any details from the group on this issue.**

**AP1** All – to provide JEw with more scenarios and real live situations for which the current guidance is considered lacking.

It was confirmed that the TOR had been agreed and issued to the group. AB said that experience from these initial meetings indicated there needed to be a sharper focus on agreeing the agenda going forward. He appreciated the need for better practice from Stamp Office on communicating outcomes and distribution of relevant information.

### **3. Land Pooling**

JEw confirmed that the current policy was to follow the judgement in the CGT case 'Jenkins v Brown' for land pooling cases. However, this judgment is not now seen as being consistent with the wider principles of SDLT and Stamp Office have completed an internal review of the issues surrounding land pooling. The next step is to seek advice from HMRC solicitors on the application of this judgement to SDLT. JEw confirmed that if a change of policy was envisaged all necessary procedures and consultation would be followed. In the first instance any change of opinion would be conveyed to the group for initial discussion.

It was stated that Nigel Popplewell had already circulated a paper on this subject to members of the forum and the forum agreed they had sight of it.

MS sought assurance that the current policy should be adhered to in the interim. JEw confirmed this and MS queried the effect of any changes upon land already 'pooled', which it was agreed would have to be considered if there was a change in policy.

There was discussion around the effect of the judgement on land being taken out of the pool. CL clarified that for CGT purposes there was no chargeable occasion for land going in or out. GK said that if the CGT ruling was being applied consistently it would follow that there could be no SDLT consequences either. JEw confirmed that the point had not been considered previously but it would seem reasonable to assume the CGT treatment applied in both circumstances, provided the same land was taken out of the pool.

It was agreed that sight of some documentation for these types of transaction would be benefit discussions with Solicitors Office. **AP2** MS agreed to consult with his property department to see if they had dealt with a 'land pooling' transaction, the key documents for which could be shared with HMRC, suitably redacted.

#### **4. Residential Definitions**

Keith Brown who was dealing with this has retired and a trainee graduate within Stamp Office will be taking this issue forward. JEw confirmed that Stamp Office had not yet sought Solicitor's Office advice. It was acknowledged that there was a paper on the subject prepared by Nigel Popplewell but it was not clear if Nigel had circulated his findings as JEw had only a 1 page paper. GK suggested that Nigel had produced a much wider paper and that JEw probably held the précised version.

MS suggested that S116 also required clarification on what is meant by 'hotel, inn or similar establishment' and how to treat accommodation such as 'chalets' which may have letting restrictions. SR later confirmed that 'serviced apartments' and the similarities with hotels also required further exploration and other forum members highlighted the need to improve guidance. JEw acknowledged that there were a number of issues surrounding S116. It was written primarily with DAR in mind but did not now support developments in legislation. There are also issues around student accommodation and multiple dwellings relief, which alongside the other issues necessitates a comprehensive review of this piece of legislation.

**AP3 JEw** confirmed she will compile a list of all the issues highlighted and consult with Nigel. She will circulate something of substance for consultation before the next meeting highlighting the issues to be looked at.

#### **5. SDLT and DOTAS**

AB confirmed that work on updating the regulations was being taken forward by Demi Abeynayake. Details of the proposed changes will be circulated to the group in due course.

The forum was asked what issues they had surrounding the DOTAS regime. Concerns were raised about APN implications for borderline cases resulting from the lack of the appropriate filters which applied in other direct taxes.

Borderline cases were resulting in concern [and some paranoia] on behalf of the clients, where it seemed likely there was no scheme involved. Decisions to make a disclosure could be made on the side of caution but the forum were concerned as to what view would be taken of such a disclosure given the comments by the FTT judge in the 'Project Blue case'. These comments indicated that in making such a disclosure there was an acknowledgement of a scheme of avoidance.

AB said that the decision in Project Blue was not that the disclosure proved that there was an avoidance scheme, but that PBL had failed to satisfy the Tribunal that it was not engaged in avoidance. He confirmed that the great majority of arrangements which had been notified to HMRC over the years are not included in the published list of SRNs which would be eligible for APN. For any new disclosures, there is a process to consider whether APN is appropriate.

AB said that for SDLT, APN action should not be taken without consultation between Counter Avoidance and his Anti-Avoidance Team. There was concern within the forum that if a SDLT case appeared on a list outside of Stamps it may be automatically subjected to APN.

The forum suggested the APN process for SDLT needed to be more focused and asked if the problems they had raised were represented in other regimes. PD confirmed that APN was far from

an automated process and notices required a great deal of consideration. He supported AB's comments that DOTAS needed to have wide implications as it was not possible to hone down the requirements further. As a consequence the disclosures required further consideration and he did not think SDLT differed widely in this respect.

The forum requested clarification on the enquiry status that was required before APN could be considered. AB confirmed that there had to be an open enquiry or an appeal in order for APNs to be considered.

There was discussion on how wide the 'avoidance' net could be cast. Although difficult to give an exhaustive definition, AB said that avoidance was generally seen as more than the choice between two legitimate options one of which had a lower tax result.

**AP 4** AB agreed to confirm with his counterpart in Counter Avoidance that Stamp Office would be consulted in any case for SDLT before APNs were to be issued.

**Post meeting update – AB can confirm that having discussed this point, it is agreed procedure that the APN team will contact Stamp Office as part of consideration of APN for any properly issued SRN. This is part of the APN governance process (as confirmed with a practical example in one instance since this Tech Forum meeting).**

## **6. Pre completion Transactions**

JEw confirmed she had read GM's Email and confirmed her understanding that he was suggesting that Schedule 2A does not allow for deemed splitting of a contract.

GM felt the guidance was weak in this area. He thought the legislation was not quite right and that there could not be a pretence that there were contracts for smaller pieces of land.

JEw wanted to know if ultimately it was guidance or legislation that required amendment. The forum suggested there were limits on interpretation and that minor adjustments to the legislation were required, supported by improved guidance.

JEw stated that it would not be possible to include these amendments in the forthcoming Finance Bill and GK felt that the use of s109 was probably not appropriate in this instance. It was agreed that the priority is to improve guidance, with any necessary legislative changes being made at the earliest opportunity.

The forum indicated that even though it may not prevent transactions clients do worry about the lack of clear guidance in this area. Uncertainty and the financial assurances needed can lead to increased costs. PD asked for examples of such situations and CL may be able to assist with this.

GM suggested that conveyancers generally needed further examples in respect of Schedule 2A and that there were difficulties in applying the current examples to transactions. JEw said she would appreciate examples from the group that could be used to enhance the guidance.

**AP5** CL to provide relevant examples.

**AP6** Group to provide details/examples of where the guidance needs to be improved. JEw to consider examples received for incorporation in guidance.

## **7. Payments under Land Compensation Act**

**AP7** the guidance to be updated as previously discussed. In the interim AB to ensure a copy of the draft amendment was attached to the minutes.

The forum discussed 'compulsory purchase orders' (CPO's) which were currently the subject of a government consultation. There were other avenues to facilitate development such as 'development consent orders' (DCO's) which could be less costly than 'CPO's. The forum thought that HMRC needed to be aware of this, as changes may be required to the relief for CPOs.

PD asked if DCO's were currently being used.

AP8 –JE to contact DCLG to make them aware of the potential SDLT issues.

## **8. Overlap Relief**

JEw stated that a straightforward percentage would not work and that an understanding of the transaction was required. There was an acceptance of this within the forum but it was mentioned that without further guidance some advisers may be taking an overly cautious view to the detriment of their clients, e.g. where the new lease included the whole of the old lease. A discussion took place regarding the varying percentages in different regimes that could reflect 'substantially'.

There was also a view that guidance was being used to mask deficiencies in legislation. There was suggestion that the legislation be re worded to 'includes substantially the same'.

**AP9** JEw confirmed that there was updated guidance currently in draft form. She would make it available with the minutes and the forum could comment if further examples are needed.

## **9. Sale and Leaseback**

The issue here is with the application of the trust rules at Sch16/para3, which treat the grant of a lease as made by/to the nominee, where the legal title to land is held by a nominee, as is common in joint venture and partnership structures. There was a consensus that advisers were having to 'work around' the legislation, not only on sale and leaseback transactions but also those involving the surrender and re-grant of leases. However, these work arounds can be costly and time consuming and did not work in all instances.

SR stated that Simon Yeo had written an article for Tax Journal on the issue which he would share with the group. There was discussion around a potential legislative fix, e.g. by including in Sch17A/para11. The forum suggested there was already precedent set in Schedule 4A to dis apply a nominee being treated as the purchaser.

JEw confirmed Paragraph 3 Schedule 16 had already been identified as needing attention.

**AP10** JEW will identify someone to look at this particular issue and see if the problems can be dealt with through guidance prior to any legislative fix.

PD queried whether there was any quantitative or qualitative evidence base to support the need for a fix.

**AP11** SR can provide the article by Simon Yeo for circulation and some redacted transaction information.

**AP12** IF volunteered to act as a conduit for this information and to collate it and feedback to the forum.

## **10. AOB**

SR requested an update on the relief declaration for ATED. **AP13** JEW to check the current status and report back to the group.

GM asked for progress on revised guidance on 'deferment' following the Autumn Statement changes. **AP14** JEW understood this had been drafted, would check on progress and include with the minutes

DW Sought confirmation Stamp Office had received his paper on exchanges. He had a sale and leaseback scenario to which example 3 of the guidance could be applied. As example 3 is something of a concession, his clients were unsettled by it.

The forum also highlighted that HMRC and Revenue Scotland advice on the transitional rules contradict example 3.

**AP15** JEW agreed to take this issue away, locate the exchange document referred and consider what action needs to be taken.

**AP16** IF agreed to collate information on the impact of this exchange guidance together with that for sale & leaseback.

DW asked why the partnership rules had a three-year 'clawback' period where a partner withdraws money from a partnership following the transfer of land to the partnership. GM explained that this was an anti-avoidance provision but stated that, given subsequently changes to the legislation, it was arguable whether this was still required. It was noted that this was one of the issues that had been raised by the Office of Tax Simplification, which HMRC were already considering.

AB updated the forum on Funded Debt and S77 relief. A Newsletter is to be published shortly to provide guidance on HMRC's view of the issue. AB said that it was right that stock included issued funded debt for s77 purposes and that this should be 'mirrored' in order for the relief to be available. Issued funded debt is taken to be debt that takes the form of the capital structure of the company and that this would not include such short term debt as overdrafts. The use of 'issued' implies something put out by the company (such as loan notes) as opposed to debt which it simply receives from a lender. The Newsletter won't contain a comprehensive list but will outline the principles to be adhered to and ensure S77 is workable.

Concerns were raised on transactions that had already been adjudicated. AB said there was no provision for retrospection and no possibility of transactions being revisited.

Further issues were raised in relation to IPO's that can't be mirrored by the PLC's which are required in certain transactions. It was asked if there was any appetite for disregarding funded debt in scenario's such as this. AB acknowledged that the Newsletter was a first step and there would be other circumstances where funded debt could be an issue. Further considerations would be needed going forward. **AP17** AB asked CL if he could prepare a paper on some of the scenarios for which issues still remain.

AB was unsure when the next Stamps Technical Newsletter would be issued. JE suggested Stamp Office look to issue a standalone Newsletter if any lengthy delay is envisaged. The content of the Newsletter will be incorporated within guidance in due course. **AP18** AB will attach draft Newsletter to minutes if delay is likely.

SR enquired if consideration was being given to putting a time limit on the application of Sch17A/para 11 (assignment of a lease treated as a grant). It was confirmed that it was.

There was no further business and the meeting was concluded.