Stamp Duty Land Tax: Disclosure of Tax Avoidance Schemes

Who is likely to be affected?

Users and promoters of stamp duty land tax (SDLT) avoidance schemes.

General description of the measure

There will be two changes to the Disclosure of Tax Avoidance Schemes (DOTAS) regime for SDLT. The first will remove the DOTAS 'grandfathering' rules for certain avoidance schemes. This will include requiring certain grandfathered schemes, still in use but disclosed before April 2010, to be disclosed one additional time by promoters so that new users of those schemes must be identified to HMRC. The second change will remove the property valuation thresholds for disclosure.

Policy objective

These changes will increase HMRC's awareness of SDLT avoidance schemes and those using them. They will support HMRC's anti-avoidance strategy to prevent, detect and counter tax avoidance. This will help to make the tax system fairer by ensuring that everyone pays their fair share.

Background to the measure

This measure has not been previously announced. These changes are in response to developments in the marketing and use of SDLT avoidance schemes. There has been an increase in the use of old avoidance techniques and schemes are now being marketed for use in relatively low-value transactions.

Detailed proposal

Operative date

The operative date for the regulation-making power will be the date of Royal Assent to the Finance Bill. HThis measure will only have effect once new regulations come into force at a later date.

Current law

The DOTAS regime in Part 7 (sections 306 to 319) of the Finance Act 2004 requires certain persons, normally the promoter of the scheme, to provide early information, 'a disclosure', to HMRC about tax avoidance schemes that fall within certain descriptions.

Part 7 provides that HMRC may allocate and issue a scheme reference number (SRN) within 30 days of a disclosure and imposes various obligations on promoters, clients and users to transmit and report SRNs. Since 1 January 2011, promoters have to provide HMRC with periodic information about clients to whom they become required to issue a SRN.

Section 308(5) provides that a promoter has to disclose a scheme once only so long as it remains substantially the same.

The descriptions of schemes required to be disclosed for SDLT are in The Stamp Duty Land Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2005, SI 2005/1868 (the SDLT Descriptions Regulations), as amended by SI 2010/407.

These regulations provide for the disclosure of schemes that concern either commercial property with an aggregate value of £5 million or residential property with an aggregate value of £1 million (the valuation thresholds). Schemes are excepted from disclosure if they either fall within a list (the Schedule to the regulations) or were first made available before 1 April 2010, by any promoter, for implementation ("the grandfathering rule").

The information required to be provided and the time limits for providing it are prescribed in the Tax Avoidance Schemes (Information) Regulations 2004 (SI 2004/1864).

Proposed revisions

The SDLT Descriptions Regulations will be amended to remove the grandfathering rule for SDLT avoidance schemes that incorporate the use of the sub-sale rules (section 45 Finance Act 2003) and remove the valuation thresholds.

Finance Bill 2012 will include a new power for regulations to provide for section 308 Finance Act 2004 to apply with modifications. Regulations will be made to modify the application of section 308 to proposals or arrangements that incorporate the sub-sale rules and that were disclosed before 1 April 2010. The regulations will require one further disclosure of such a scheme to bring them within the SRN regime. Before 1 April 2010 SRNs were not issued to promoters and HMRC did not obtain details of those using disclosed arrangements.

Summary of impacts

Exchequer impact (£m)	2011-12	2012-13	2013-14	2014-15	2015-16
	-	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact. It supports the Exchequer in its commitment to protect revenue.				
Economic impact	This measure is not expected to have any significant macroeconomic impacts.				
Impact on individuals and households	This measure will only affect individuals and households entering into certain SDLT avoidance schemes.				
Equalities impacts	The proposal is not expected to have any different impact on people with protected characteristics.				
Impact on business including civil society organisations	We anticipate that this change will only affect businesses or other organisations entering into (or marketing) certain SDLT avoidance schemes. Those entering into (or marketing) certain arrangements to avoid SDLT will have to disclose those arrangements to HMRC. This will have a negligible impact on business's administrative costs.				
Operational impact (£m) (HMRC or other)	This will require negligible extra HMRC resource because additional disclosures will be handled within existing available resources.				
Other impacts	Small firms impact test: Some of the scheme promoters and users are likely to be small firms (i.e. have fewer than 20 employees) but the Government is confident they will have the capacity to understand and implement this change.				

Monitoring and evaluation

This measure will be monitored through avoidance scheme disclosures and communication with the taxpayers affected.

Further advice

If you have any questions about this change, please contact Jeremy Schryber on 020 7147 2788 (email: jeremy.schryber@hmrc.gsi.gov.uk).

1 Disclosure of stamp duty land tax avoidance schemes

In section 308 of FA 2004 (duties of promoter), after subsection (5) insert—

"(6) The Treasury may by regulations provide for this section to apply with modifications in relation to proposals or arrangements that—

(a) enable, or might be expected to enable, a person to obtain an advantage in relation to stamp duty land tax, and

(b) are of a description specified in the regulations."

EXPLANATORY NOTE

STAMP DUTY LAND TAX: DISCLOSURE OF TAX AVOIDANCE SCHEMES

SUMMARY

1. This clause amends section 308 of Finance Act (FA) 2004, inserting a new regulation-making power. Regulations made under the new power may modify the way section 308 applies in relation to stamp duty land tax (SDLT) avoidance schemes.

DETAILS OF THE CLAUSE

2. Section 308 of FA 2004 sets out the obligations of a promoter of a tax avoidance scheme to provide HM Revenue & Customs (HMRC) with information about that scheme.

3. The clause inserts a new subsection (6) into section 308. The new subsection (6) gives HM Treasury the power to make regulations which modify the application of section 308 in circumstances to be described in the regulations.

BACKGROUND NOTE

4. The SDLT Disclosure of Tax Avoidance Schemes (DOTAS) regime was extended from April 2010. From that date, HMRC has been able to issue a scheme reference number (SRN) to promoters when they disclose a scheme. The SRN has to be passed on to any users of the scheme who then in turn have to provide HMRC with the SRN, allowing HMRC to identify the users of the scheme.

5. However, SDLT avoidance schemes that were first disclosed before April 2010 were left out of the SRN regime by “grandfathering” rules. The Government intends to remove these grandfathering rules for certain schemes so that they will fall within the SRN regime. However, in order for this removal to be effective, section 308 of FA 2004 will have to modified in respect of those schemes so that they have to be disclosed by a promoter one further time. The clause gives HM Treasury the power to make regulations to make such modifications to the effect of section 308.

6. If you have any questions about this change, or comments on the legislation, please contact Jeremy Schryber on 020 7147 2788 (email: jeremy.schryber@hmrc.gsi.gov.uk).