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SDLT Avoidance Schemes

Published 18 October 2018

Recent high profile regulatory actions and the media attention this has attracted, appears to be supressing appetite for these schemes. However, both past participants and introducers remain firmly at risk given the HMRC's Counter Avoidance Directorate's continuing commitment to pursue wrongdoers.

Obviously the promoters of such schemes, principally solicitors and accountants, remain the primary targets for the regulators. But introducers, typically estate agents and property consultants, are not immune from prosecution and momentum seems to be building within claims management circles to explore civil claims against ALL those involved.

Typical Schemes

The most popular schemes broadly fell into one of two categories:

1. **Husband & Wife Scheme:** Involved simultaneous contracts whereby the property was sold to a single individual, followed by an immediate sub-sale to another individual at a much lower value (at a price typically below the SDLT threshold);

2. **Special Purpose Vehicle (SPV):** Involved the formation of a (un)limited SPV whose specific purpose was to buy the property with the buyers becoming the sole shareholders of the newly formed company. When the transaction was complete, the SPV would be wound up and the property transferred to the shareholders as a distribution of assets (thereby avoiding SDLT).

The Regulatory Response

In March of this year, the Advertising Standards Authority (ASA) adjudicated in favour of HMRC, determining that advertising issued by CDP Tax and Wealth (t/a 'Fiducia') breached advertising standards when it claimed that it could help individuals avoid SDLT. The ASA agreed with HMRC that the scheme promoted by Fiducia "*met the definitions of tax avoidance and made the payment of stamp duty appear optional, contrary to government guidance*."

The ASA decision, of course, follows on from a number of fines issued by the Solicitors Regulatory Authority (SRA) to law firms for their part in the conveyancing process which helped to facilitate the tax avoidance.

What does this mean for property professionals?

HMRC's sustained assault on SDLT avoidance schemes continues to spell bad news for scheme promotors and introducers.

We are aware of a number of Estate Agents (in return for commission) having introduced prospective residential property purchasers to scheme promoters. If things turn sour, (which may ultimately be many years down the line) the buyers will almost certainly be looking at all potential targets as a means of mitigating and/or recovering their losses. Interest, fines and penalties are obvious heads, but additional consequential losses cannot be ruled out.

We are aware of a number of prominent Claimant firms of solicitors advertising their services to assist clients to try and recover compensation against the promoter or introducer.

In practical terms, a claim against an Estate Agent (that merely introduced purchasers to a scheme promotor) is likely to be fraught with difficulty; not least because the duty to provide appropriate advice in connection with the scheme will, in most circumstances, rest with the promoter.

However, that is unlikely to stop disgruntled former clients trying to recoup their losses by pointing the finger at the Agent that brought about their participation in the scheme, whether via assertion of endorsement / approval of the scheme through simple referral, secret profit (undeclared commission) or a duty of care to warn (based on assumption of responsibility principles).

Our advice is simple. Do not have any involvement in such schemes.

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