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STPG ON SDLT

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SDLT – A Scottish View

A Scottish Stamp Taxes Practitioners Group?

Maybe it is true. When you get older you remember the so-called good old days through rose-tinted spectacles. I certainly view the old stamp duty regime in that way. The Edinburgh Stamp Office seemed to be run by one person and he seemed to be able to answer any question put to him. He even most generously reminded you of various reliefs that you had 'forgotten' to claim. The clients were also not that bothered about paying stamp duty, as it was not a major cost. How times have changed.

So what changed?

So what changed? In short, stamp duty rates went up, and up and up again. This meant that stamp duty began to be noticed and in particular by commercial property clients. Clients started to ask if it was possible to avoid paying stamp duty. Ways were found and duty was avoided. Unlike our colleagues who are governed by English law, Scottish law did not for the most part allow us to make use of the concept of beneficial ownership of property. That said, ways were found even under Scots law. Not surprisingly, the Treasury found out about this. I suspect the clue was in the fact that there was less stamp duty revenue coming in despite the booming property market.

I distinctly remember when I returned from working in Chicago in 2000 trying to understand why so many people thought it a good idea to publish, and in some cases in great detail, how easy it was to avoid paying stamp duty. Maybe they were just thinking ahead and saw this as some form of 'disclosure' practice! So what happened?

The UK Government decided enough was enough. No-one really could argue against the fact that something had to be done, given the amount of stamp duty avoidance. That said, the consultation on the replacement for stamp duty on land and buildings was abruptly curtailed. The disaster for us in Scotland was that the consultation had barely begun. Even then

James Aitken, Senior Associate, HBJ Gateley Waring, puts the case for starting a Scottish Stamp Taxes Practitioners Group

it was clear that HMRC had not realised how much Scottish property law differs from its English equivalent.

Apologies for digressing for a minute but I am sure many of the people who are involved with stamp taxes were also involved in the debate over planning gain supplement (PGS). The decision by Alistair Darling, yes another Scottish Chancellor, in the Pre-Budget Report not to proceed with PGS as outlined in the consultation was welcomed by all interested parties.

I thought the strongest argument against introducing PGS in Scotland was the obvious point that the funding of infrastructure was more of a devolved issue – that is, a housing and a planning matter – rather than a tax issue, which of course is for the most part a reserved matter. That said, I suspect that HMRC was tired of hearing the argument which went along the lines of: you made a mess of SDLT in Scotland and you seem to be doing the same with PGS. I can only speak for myself on this point but HMRC was dealing with at least one individual who had become 'battle hardened' due to dealing with SDLT.

The purpose of this article is not to revisit the shambles that was the introduction of SDLT into Scotland. That is a mistake from which SDLT has not yet recovered, particularly in the context of how SDLT is applied to the Scottish law of leases. I am of the opinion that the new system only works because the Scottish legal profession makes it work.

Notwithstanding what I have just said, I would like to acknowledge the amount of effort put in by Crispin Taylor and a number of his colleagues on trying to fit the square SDLT peg into the round hole that is Scottish property law.

The square SDLT peg

So what can be done to round the square SDLT peg?

One option for consideration may be to set up a Scottish Stamp Taxes Practitioners Group. I am a member of the Stamp Taxes Practitioner Group (STPG). I live in Edinburgh and mostly work in my firm's Edinburgh office. I do, however, as do a large number of my fellow Scottish solicitors, do a fair bit of 'English' work. My caseload is an unusual and varied one. I am primarily a private client lawyer who also does a lot of charity law work and makes regular guest appearances in the world of property taxation. That is where my interest in the stamp taxes comes from. I suspect that many other Scottish solicitors will have a similarly varied background. I also suspect that for the great majority of solicitors in Scotland SDLT is just one of many issues, and not just tax issues, that they have to deal with.

I have not yet been able to attend any STPG meetings, nor the already well regarded conference. That said, the information published on the website is of great interest to me, as are the e-mail debates between members on almost any stamp taxes issue. It is also my own opinion that the STPG has done a great job since it was formed.

A New Year meeting

I am therefore proposing that a meeting be held at my offices here in Edinburgh early in the New Year (not too early!). The purpose of the meeting will simply be to see if there is support for creating a Scottish version of the STPG. If anyone would like to attend this meeting I would be grateful if they would e-mail me. My contact details

are noted at the end of this article. I would also be grateful for their general comments on this idea. I will then, assuming there is sufficient interest, organise the meeting. In addition to this article I will e-mail directly a number of other people who also deal with the various stamp taxes on a regular basis.

Thinking ahead positively, what might be on the agenda for the first meeting?

First things first

As with all new matters we have to get the basics sorted out first.

- Is there a need for a STPG?
- What type of organisation is it to be?
- What role do we envisage for this organisation?
- How we would interact with the STPG?
- Membership requirements – for example, should the group be open to anyone or in some way restricted?
- Office bearers.
- Schedule of meetings.
- Location for meetings.

Future matters

Thinking even further ahead, if a Scottish STPG is set up, some of the issues which

may find a place on a future agenda may include:

- the possible closure of the Edinburgh Stamp Office;
- the possible relocation of the Edinburgh Stamp Office to the Registers of Scotland;
- the relocation of the company document stamping machine;
- continuation of the 'over the counter service';
- the 16-day 'special urgency service' which applies if no SDLT 5 is received;
- impact of ARTL or Automated Registration of Title to Land;
- whether we need separate Scottish forms and guidance notes;
- whether we need a separate Scottish complex transactions unit;
- continuing the links already created with HMRC and in particular Stamp Taxes;
- improving Scottish SDLT guidance, for example Scottish lease guidance is only now being prepared and this is being done by the tax committee of the Law Society of Scotland;
- the devolving of the stamp taxes to the Scottish Parliament; and
- links to organisations such as the Law Society of Scotland and the Institute

of Chartered Accountants of Scotland and also Scottish politicians wherever based and of course the Scottish and UK parliaments.

On that last point, I understand that discussions are taking place on setting up a cross-party tax group in the Scottish Parliament: further evidence that tax is again high on the political agenda both north and south of the border.

I started this article by looking back at what I regard as simpler times. Sadly, those times are gone. What is also certain is that the simpler times, and certainly from a tax perspective, are not coming back any time soon. That may in fact be the best argument I have for the setting-up of a Scottish Stamp Taxes Practitioners Group.

I look forward to hearing from a number of you who have kindly taken the time to read this article.

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The views contained in the article are the authors own and do not necessarily represent the views of HBJ Gateley Wareing.

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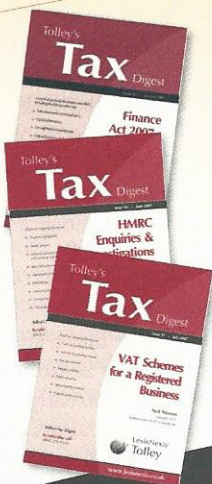
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