

**EXPLANATORY MEMORANDUM TO THE STAMP DUTY LAND TAX  
(ADMINISTRATION) (AMENDMENT) REGULATIONS 2004**

**2004 No.3124**

1. This explanatory memorandum has been prepared by the Inland Revenue and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. **Description**

- 2.1 This instrument brings in a new version of Stamp Duty Land Tax supplementary form SDLT4 and provides for a transitional period until 31<sup>st</sup> March 2005 when either new or old forms may be used.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

- 3.1 The instrument breaches the 21-day rule. This is in order to meet a release date of December for the online and CD-ROM versions of the new form. Timely release will provide customers with a self-validating form so cut down on errors, help speed the conveyancing process and reduce costs for practitioners and the Inland Revenue. Delay in implementation would lead to a continuation of the costs related to manual completion and processing and of other associated risks as set out in the attached Regulatory Impact Assessment.

4. **Legislative Background**

- 4.1 The instrument amends the Stamp Duty Land Tax (Administration) Regulations 2003 (S.I. 2003/2837) which came into force when Stamp Duty Land Tax was first introduced on 1<sup>st</sup> December 2003. The Regulations are made under Section 113(2) of, and paragraph 1 of Schedule 10 to, the Finance Act 2003.

5. **Extent**

- 5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

- 6.1 These regulations are subject to annulment and do not amend primary legislation.

7. **Policy background**

- 7.1 Under Stamp Duty Land Tax, a land transaction is to be notified on return form SDLT1, together with various supplementary forms

required in particular cases. Form SDLT4 is broadly required for commercial transactions and those involving leases.

7.2 The aims of the new form are:

- To streamline and minimise return requirements; in many cases the new form reduces the total number of entries needed and/ or the number of supplementary forms to be completed.
- To maximise automatic processing of information to ensure prompt issue of certificates to customers, so speeding the conveyancing process.
- To provide ‘joined-up’ collection of information for the Valuation Office Agency, Land Registries and Inland Revenue offices in the most efficient and cost-effective way.

7.1 A full Regulatory Impact Assessment has been published and is available in the House of Commons library. As part of the assessment, stakeholders in the Small Business Service (‘SBS’), the Council for Licensed Conveyancers (‘CLC’) and the Law Societies have been consulted on an informal basis.

7.2 The SBS and CLC have confirmed they are content with the new form. Comments from the Law Society for Scotland have been incorporated in improved guidance.

**8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is as set out at paragraphs 21 and 23 of the attached Regulatory Impact Assessment.

**9. Contact**

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## REGULATORY IMPACT ASSESSMENT (RIA)

### STAMP DUTY LAND TAX: NEW FORM SDLT4

#### Purpose and intended effect of the measure

##### *The policy objectives*

1. The new form SDLT 4 is supplementary to the main Stamp Duty Land Tax return SDLT 1. The aims of the new form are:

- to provide a consistent format for customers to return additional information regarding certain land transactions
- to enable linked lease transactions to be notified on a single return in accordance with the statutory requirement at Section 108(2) Finance Act 2003
- to maximise automatic processing of information, so ensuring that certificates are issued to customers as promptly as possible
- to collect information necessary to the work of the Valuation Office Agency ('VOA'), the Land Registries and Inland Revenue offices in an 'IT-friendly' format, so providing a joined-up collection of information in the most efficient and cost-effective way.

##### *Background and introduction*

2. Since Stamp Duty Land Tax ('SDLT') was introduced on 1<sup>st</sup> December 2003, land transactions have been notified on a return, SDLT 1, plus supplementary forms as appropriate.

3. The current form SDLT 4 contains 19 questions and is divided into two parts. The first part, 'About the transaction', may apply to any transaction (freehold or leasehold) notified on the main return form SDLT 1 and asks further details about commercial transactions and those with special features including deferred payment arrangements and contingent consideration. The second part, 'About leases', asks for details of the particular terms of certain lease transactions notified on the SDLT 1.

4. Many of these questions mirror those contained in the pre-SDLT form Stamps L(A)451: 'Particulars of Instruments Transferring or Leasing Land' and, like the L(A)451, serve largely to collect information on behalf of the Valuation Office Agency ('VOA') in accordance with section 28 Finance Act 1931.

5. However the current form is not fit for purpose where two or more land transactions are linked, one or more of which involves a lease (transactions are 'linked', broadly speaking, when they are part of a single bargain). To ensure all necessary information is collected in respect of each individual lease, current guidance asks for separate forms SDLT 1 to be completed for each lease. In all cases but the simplest residential leases, form SDLT 4 currently also needs to be completed.

6. Where a single lease covers multiple properties, the current form has no room for address details so supplementary forms SDLT 3 also have to be completed in respect of all but the first property.

#### *The risk(s)/harm being addressed*

7. **Legislative:** Section 108(2) Finance Act 2003 states that 'where there are two or more linked transactions with the same effective date, the purchaser...may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction'. The current practice of asking for multiple SDLT1 returns in linked lease cases is at odds with this undertaking. We must instead offer a single return route, as we do for other linked transactions.

#### **8. Regulatory burden:**

- Even where only two lease transactions are linked, commercial customers may currently need to fill out up to six different forms.
- Multiple property leases are less common, but we would wish to avoid the burden of completing multiple forms in these cases too.
- Currently separate forms SDLT4 and SDLT3 need to be completed for each sublease to which a headlease or freehold is subject, although details of subleases do not affect the SDLT liability.

9. **Compliance:** The current form presents a degree of risk to the compliance process, for example linked lease addresses from multiple SDLT1's cannot easily be matched. The current form also does not gather sufficient data in respect of certain rent reviews, which is why the new question 35 has been added to determine possible future liability.

10. **Data collection:** The current form does not gather information on the types of commercial purchaser (whether incorporated, charity, partnership etc.). Without this data it has been impossible to analyse the impact of the SDLT regime on different sectors of the commercial population. The additional question 9 on the new form will provide Analysis and Research ('A&R') with better data to support evidence-based policy.

#### **Options**

11. Under the 'do nothing' option, the risks outlined above would continue to hamper compliance and data collection. Remaining with the status quo might appear easier for practitioners but would do nothing to relieve the regulatory burden of multiple form-filing and would not accord with Section 108(2) FA 2003.

12. The alternative option is to devise a new form, in two parts as before, incorporating:-

- New questions 9 and 35 in response to the risks set out at paragraphs 9 and 10 above, and
- Questions 10 to 27, which mirror questions on the SDLT1 return regarding property, lease and tax details. These need only be completed for additional properties or linked transactions not already returned on the SDLT1, so there is no duplication of information. These new questions allow data to be entered on form SDLT4 which previously could only be returned on multiple SDLT3 or SDLT1 forms.

13. Within the option of the new form, discussion centred not on the content (considered a minimal change in view of the risks), but on further options concerning how and when it would be used in respect of particular transaction types, with a view to meeting the aims at paragraph 1. Although the new SDLT4 is longer than the current form (39 questions as opposed to 19), its impact depends on which questions require completion in which cases, and must be considered in the context of the whole return including the SDLT1, other supplementary forms and supporting schedules.

14. One option considered was for the SDLT1 to act as a summary return of linked lease transactions, with boxes 22 to 26 showing aggregate totals of consideration and tax, and details of each lease entered on separate forms SDLT4. This option was seen as the least burdensome for customers and met the legislative and compliance risks. It collected the necessary data for A&R and VOA, but had a resource impact for VOA. Without an address on the SDLT1 to link transactions with their database, the data would have to be entered manually or reformatted before forwarding. There was also a huge impact on delivery of the new form, as major changes would be needed to the SDLT IT system.

15. The recommended option is for the new SDLT4 form to be used as set out in the attached guidance. Under this option, for example:-

- In most cases where leases are linked, the first lease is returned on form SDLT1, with details of further leases on forms SDLT4. This goes a long way towards meeting our statutory obligations under Section 108(2) FA'03, collects all relevant data and maximises automatic processing to ensure prompt issue of certificates. Electronic stamp duty will allow for single return of linked leases to be extended further in the future.
- The scope of the new form is narrower than previously; part 2 of the form is no longer required where an existing lease of a single property is

assigned, and a new supplementary schedule collects all data on subleases so that SDLT4 forms are no longer needed in these cases. Data requested on the schedules does not exceed that requested on the SDLT4 forms. The new form SDLT4, like the current form, need not be completed for the vast majority of transactions in residential property.

- The address field on the new form SDLT4 means that additional forms SDLT3 are no longer needed to return details of multiple properties.
- Where a commercial lease is granted of a single property, the only change from the old form is that two additional questions need completion.

This was therefore seen as the best option to minimise and streamline the overall return requirements, whilst meeting information needs.

### **Business sectors affected**

16. The impact has been analysed in terms of transaction type rather than business sector (paragraph 10 above sets out the historical difficulties in analysing transaction data by sector).

17. We would expect SDLT4's to be required for a maximum of 480,000 transactions in the first 12 months of the new tax, out of a total of around 2 million transactions in the same period. Of the expected transactions requiring SDLT4's, around 90,000 will need to complete part 1, purely because the transaction is commercial. All commercial customers will need to complete the new question 9 but this is a small and straightforward additional request.

18. The remaining 390,000 forms will be completed for transactions (residential and commercial) involving a lease. In these cases the changes to part 2 of the form will have an impact on commercial customers, as set out in paragraph 14 above, but taken 'in the round' we consider this is positive.

19. In practice the changes will impact in the first instance on practitioners, who normally complete these forms on behalf of their clients as part of the whole legal documentation of a transaction. Anecdotal evidence suggests that legal fees have already increased in the recent past as a response not only to SDLT changes but, for example, money laundering legislation. It is unlikely that any further fee increases would be passed onto clients in respect of such minor changes.

### **Issues of equity and fairness**

20. As far as we can gauge, there are no particular inequalities in either the current or proposed system.

## **Benefits**

### *Economic*

21. There will be longer-term benefits arising indirectly to business from the use of the new form:

- information gathered by VOA will assist in more accurate rating of businesses
- information gathered by A&R will assist the making of evidence-based policy, better targeted at particular business sectors.

22. Any initial costs to practitioners and/ or businesses should soon be outweighed by savings from the reduction of bureaucracy. The new form reduces the total data requests in most cases and will avoid the need for many businesses to complete additional lengthy VOA returns. It is more convenient and cheaper for businesses to supply this data as part of an SDLT return at the time of a transaction, whilst paperwork is to hand, rather than later in response to a subsequent request from VOA. Approximately half a million VOA returns are currently sent to businesses per year, a figure which they expect to be reduced significantly if the new SDLT4 form is properly completed.

23. Approximately 35% of SDLT returns are currently rejected because of missing or incorrect information. This leads to practitioners having to engage in costly correspondence and delays the issue of the SDLT certificate to the purchaser. The new, more streamlined SDLT form combined with improved guidance and customer education should reduce this rejection rate in time, leading to fewer queries and quicker certification. This in turn would lead to a reduction in manual processing and improved data exchange, representing public sector savings in the longer term.

24. As the new form is made available electronically, via the Inland Revenue internet, CD-ROM and case management software, automatic validation and pre-population of fields will further reduce the rejection rate. The electronic forms also streamline the information requests, merging supplementary forms and schedules with the main return and requesting only the minimum information necessary in relation to the relevant transaction.

### *Social*

25. Not applicable.

### *Environmental*

26. Not applicable.



## **Costs**

### *Economic*

27. As the information requested in the new form is not substantially more or different from the information currently gathered, completing the new form should not take longer nor cost more. There may be a small initial cost to practitioners and/ or businesses in terms of education and training as they adapt to the new form. However it is within the normal business of practitioners to keep abreast of changes in the marketplace and, as these changes are minor, we would expect them to be absorbed relatively easily into an ongoing programme of learning.

28. Comprehensive guidance, on-line help and enquiry line advice should combine to minimise the impact of the changes on practitioners and purchasers. Although the longer form may look like an added burden, fewer questions will need to be answered overall for the vast majority of transactions so completing the new form should not take longer nor cost more. If any costs were incurred by practitioners, we would not expect these to be passed on to clients to any significant degree (see paragraph 19 above).

29. Businesses will need to renew their supplies of paper forms, but the cost impact of this will be cushioned by an 'overlap' period during which either old or new forms will be accepted. The new SDLT4 form will also be available in electronic format on the internet, on CD-ROM and via external case management software suppliers. There will be no cost impact where the form is accessed electronically.

30. Case management software will need to be updated to cope with the changes to the form, but updates are usually provided free to subscribers so we do not expect this to represent a cost to practitioners or other users. In order to minimise impact on the software producers, we have timed the transitional period to allow for a joint update together with the launch of the 2-d barcode technology.

### *Social*

31. Not applicable.

### *Environmental*

32. Not applicable.

## **Small Business impacts**

33. These economic impacts potentially apply to small businesses although not disproportionately so. As explained above, we expect any negative impact to be borne by practitioners in the first instance. Smaller

businesses should enjoy most directly the positive benefits of reduced bureaucracy. The Small Business Service has been consulted on the new form and guidance and welcomes the changes.

### **Competition assessment**

34. The new form SDLT4 omits some information requirements and may reduce the administrative burden for commercial lease transactions as fewer forms will now have to be completed, as explained above. It is considered that the new SDLT4 form would not add significant additional burden to relevant transactions and in relation to the size and value of most relevant transactions there would be a minimal effect on costs and therefore competition. This measure would not significantly affect market structure nor would it significantly affect some firms more than others.

### **Securing compliance**

35. Compliance with the form will be secured through the 'certification' process. Where the SDLT1 indicates that the SDLT4 is needed, it will have to be completed correctly before a certificate can be obtained to enable registration of title at the land registries.

### **Consultation**

36. We have consulted with the Small Business Service and Law Societies on an informal basis about the proposed changes.

### **Monitoring and evaluation**

37. In consultation with the Law Societies, the CLC and external stakeholders we are reviewing our forms and guidance. Some changes have already been made. It is likely that SDLT forms will be subject to further change in 2006/07 to align the system with e-conveyancing. A review of forms production and design will form part of our ongoing evaluation of the project and our post-implementation review later next year.

### **Summary and recommendation**

38. The recommended option is for a new form SDLT4 to be used as set out in the attached guidance, that will provide the optimum balance of collecting the required data whilst keeping to a minimum any associated burden. We recommend that you give consent to the new regulation for the new form.

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# REGULATORY IMPACT ASSESSMENT

## STAMP DUTY LAND TAX: NEW FORM SDLT4

### Statement of Ministerial Approval

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

*Stephen Timms*

Financial Secretary

**26th November 2004**