

Summary: Intervention & Options

Department /Agency: HM Revenue & Customs	Title: Identifying Users of Disclosed SDLT Avoidance Schemes	
Stage: Consultation	Version: 1.0	Date: 22 April 2009
Related Publications: The December 2007 HMT consultation document and partial impact assessment "Stamp Duty Land Tax: Ensuring Fairness for All"; the April 2008 response document		

Available to view or download at:

<http://www.hm-treasury.gov.uk/5730.htm>

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What is the problem under consideration? Why is government intervention necessary?

The Government announced at Budget 2008 that the rules requiring disclosure of tax avoidance schemes would be extended to Stamp Duty Land Tax (SDLT) schemes concerning residential property with a value of at least £1m. HMRC's enquiries into returns and discussions with key stakeholders have identified that users of SDLT schemes often go undetected, inhibiting HMRC's ability to protect Government revenues by challenging failed avoidance schemes. Consequently, a method is needed to identify users of SDLT schemes (for both commercial and residential property schemes) that have been disclosed to HMRC by the promoter of the scheme.

What are the policy objectives and the intended effects?

The Government would like to ensure that SDLT is not avoided on the purchase of UK property. This helps to ensure that the tax system is fair and transparent and protects the Exchequer against lost tax revenue which undermines the Government's investment in UK public services. This measure will help HMRC to identify those who use disclosed tax avoidance schemes in order for HMRC to target its compliance resources more effectively and efficiently.

What policy options have been considered? Please justify any preferred option.

Option 1: Do not identify users of SDLT avoidance schemes.

Option 2: Identify users of SDLT avoidance schemes by HMRC issuing a Scheme Reference Number (SRN) to the scheme promoter, who passes the SRN on to clients, who in turn report it to HMRC. This system is already used successfully for income tax and corporation tax schemes. This option is preferred as being tried and tested.

Option 3. Require the user of a SDLT avoidance scheme to identify themselves without receiving a SRN from the promoter.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Expected three years from the date the regulations are introduced.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Ian Pearson MP



.....Date: 08/04/2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Identify scheme users using the Scheme Reference Number (SRN) system (preferred option)
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' The expected impact of this option is small, as it affects only a limited number (say 10 to 20) of specialist tax advisory firms and residential property clients (say around 500 per year) who are involved with the new and innovative schemes. There will be some initial costs as the advisers will need to learn the new system and operate the supply of SRNs to clients.		
	One-off (Transition) Yrs			
	£ Negligible			
	Average Annual Cost (excluding one-off)			
	£ Negligible		Total Cost (PV)	£ Negligible
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Primarily fairness in the residential housing market as certain abuses are closed down, and the full value of the SDLT is secured in the areas of abuse for the Exchequer.		
	One-off Yrs			
	£ Negligible			
	Average Annual Benefit (excluding one-off)			
	£ Negligible		Total Benefit (PV)	£ Negligible
Other key non-monetised benefits by 'main affected groups' There is an expected yield in 2010 which depends on the amount of abuse on the current property baseline present after the grandfathering concession and dependent on the market conditions – this is highly uncertain. It would be further informed by the consultation on likely volumes.				

Key Assumptions/Sensitivities/Risks 1) Schemes that would be disclosable are being produced by a small number of specialist advisory firms – of the order of 10 to 20. The learning costs are negligible in these firms and in a slightly wider circle of firms who do not offer such schemes. Operating costs of advising SRNs to clients are broadly within the cost of a standard letter, plus letters to HMRC.

Price Base Year 2009	Time Period Years	Net Benefit Range (NPV) £ Neg	NET BENEFIT (NPV Best estimate) £ Neg
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	Effective late 2009			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ Negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £	--	Decrease of £	---
		Net Impact	£ Negligible

Key: Annual costs and benefits: (Net) Present

Summary: Analysis & Evidence

Policy Option: 3

Description: Users of SDLT avoidance schemes to notify HMRC without receiving a SRN from the promoter

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Some 2500 customers are estimated to be affected, that is 5-fold option 2. The unit cost effect is estimated to be at least 2-fold the cost in Option2. The bottom line is overall costs are expected to be 10-fold those of Option 2 but still negligible. Costs in HMRC would also be higher as more unnecessary forms are handled.	
	One-off (Transition)	Yrs		
	£ Negligible			
	Average Annual Cost (excluding one-off)			
	£ Negligible		Total Cost (PV)	£ Negligible
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Primarily fairness in the residential housing market as certain abuses are closed down, and the full value of the SDLT is secured in the areas of abuse for the Exchequer. Perhaps marginal more abusive schemes are found with a slight increase in yield relative to Option 2.	
	One-off	Yrs		
	£ Negligible			
	Average Annual Benefit (excluding one-off)			
	£ Negligible		Total Benefit (PV)	£ Negligible
Other key non-monetised benefits by 'main affected groups' As option 2				

Key Assumptions/Sensitivities/Risks The expected Exchequer impact might be a little more benefit but at the cost of very much more admin burden and some more HMRC handling costs related to forms found to be unnecessary.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ Neg	NET BENEFIT (NPV Best estimate) £ Neg
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What is the geographic coverage of the policy/option?		As Option 2	
On what date will the policy be implemented?		As Option 2	
Which organisation(s) will enforce the policy?		HMRC	
What is the total annual cost of enforcement for these organisations?		£ Negligible	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		No	
What is the value of the proposed offsetting measure per year?		£ n/a	
What is the value of changes in greenhouse gas emissions?		£ n/a	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	No	No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £	--	Decrease of £	-- Net Impact £ negligible

Key:

Annual costs and benefits: (Net) Present

Evidence Base (for summary sheets)

Introduction

This Impact Assessment examines the costs and benefits of modifying the Disclosure of Tax Avoidance Schemes (DOTAS) regime to include the disclosure of stamp duty land tax (SDLT) avoidance schemes relating to residential property with a value of at least £1m and introducing a means of identifying users of residential and commercial property schemes.

HMRC is subject to quantified targets to reduce one aspect of compliance costs in particular; the admin burden on business of disclosing information to HMRC or to third parties. This burden is assessed through the 'Standard Cost Model', an activity-based costing model which identifies what activities a business has to do to comply with HMRC's obligations, and which estimates the cost of these activities, including agent fees and software costs.

The incidence of Stamp Duty Land Tax on residential property is primarily on individuals not businesses. The burdens are primarily on what individuals have to do in Option 1 and particularly so in Option 2. In accordance with the SCM methodology we have considered how Option 1 and Option 2 affect individuals primarily.

Policy Objectives and intended effects

The policy objectives of DOTAS are to counter avoidance by obtaining:

1. early information about avoidance schemes and how they work – informing loophole blocking; and
2. information about who has used a scheme – informing HMRC's compliance activities.

The intended effects are:

1. for HMRC to obtain early disclosure of the detail of new and innovative SDLT avoidance schemes concerning high value residential property;
2. for HMRC to obtain notification from persons who have used a disclosed SDLT scheme (commercial or residential) shortly after they implement the scheme.

Background

SDLT is a transaction tax, payable by the buyer, on the purchase of land or property, or any consideration for the acquisition of an interest in land or property. It is one of three property related taxes; the other two are council tax and business rates. SDLT is administered and collected by the Business Tax stream within HM Revenue & Customs.

As part of a major modernisation in Finance Act 2003, stamp duty (on documents) was replaced by SDLT (on the transaction itself) with effect from 1 December 2003. SDLT is also charged on grants of new leases of land and buildings both on the premium (capital sum paid by the purchaser) and on the rental income.

Current SDLT rates and thresholds applicable to residential and commercial property are:

Rate (%)	Threshold (£)
0	0-175,000*
1	175,001-250,000
3	250,001-500,000
4	Over 500,000

* The £175,000 (previously £125,000) band applies for one year from 3 September 2008

DOTAS was introduced in 2004 in relation to income tax, corporation tax and capital gains tax ('the main regime'). It requires certain persons, normally the promoter of the avoidance scheme, to provide HMRC with information about how the scheme is intended to work, normally within 5 days of the promoter making the scheme available. Promoters include accountants, solicitors, banks and financial institutions, and specialist scheme providers.

For the main regime a Scheme Reference Number (SRN) is normally allocated by HMRC to each disclosed scheme. This number is passed to the promoter and onwards to the scheme user, who in turn must notify their use of the scheme by passing the number back to HMRC.

In 2005, DOTAS was extended to include schemes that reduce SDLT on commercial property with a value of at least £5m. The descriptions of schemes required to be disclosed were drawn deliberately wide in order to flush out the extent of planning and avoidance in what was a new tax. There was no disclosure requirement for residential property schemes.

The SRN system was not adopted for SDLT. This was partly for technical reasons, but also in order to reduce burdens on those who were not engaged in avoidance.

In December 2007 HM Treasury consulted on extending DOTAS to include SDLT schemes concerning residential property of at least £1m. This was in response to evidence that specialist promoters were marketing schemes aimed at buyers of high value residential property.

The Government responded in April 2008 by announcing that DOTAS would be extended to include residential property of £1m and above, whilst noting concerns that the scheme descriptions required to be disclosed should narrowly target tax avoidance. It went on to announce that it would also introduce a means to identify users of all disclosed SDLT schemes.

Options

Option 1: Do not identify scheme users (Do nothing)

This is not acceptable for two reasons.

Firstly, HMRC is aware of a number of SDLT avoidance schemes which it considers do not work under existing law, but experiences difficulty in identifying who has used the scheme. A number of avoidance schemes are designed so that the user does not submit a Land Transaction Return. This inhibits HMRC from opening an enquiry and is unfair to the compliant majority of taxpayers who do not take part in avoidance.

Secondly, it is not desirable to inform legislative change solely through disclosures of how a scheme is intended to work. SDLT schemes are increasingly complex and close examination of the detailed arrangements is required to provide evidence and support for future proposals for change. It is also desirable to have an indication of the extent of use of a scheme in order to prioritise legislation on schemes carrying the highest risks to the Exchequer.

Option 2: Identify scheme users using the Scheme Reference Number (SRN) system (the preferred option)

The SRN system is already used successfully for income tax, corporation tax and capital gains tax schemes.

A person who discloses a SDLT scheme to HMRC (whether it concerns commercial or residential property) will normally be issued with a SRN by HMRC within 30 days of HMRC receiving the disclosure. A scheme promoter who is issued with a SRN will then be required to pass the SRN on to a client within 30 days of becoming aware that the client had implemented the scheme. If the client is not the end user of the scheme (i.e. the person expecting to obtain a SDLT reduction) or not the only end user, they would have to pass the SRN on to the end user(s), if they know who they are.

A promoter or an intermediary (a client who is not the end user, or the only end user, of the scheme) would be required to pass on the SRN using a special purpose HMRC form that would tell the end user what to do with the SRN.

The end user would be required to report the SRN and other information to HMRC. For a number of reasons it would not be viable for the end user to report this information back to HMRC using the Land Transaction Return (Form SDLT1).

Firstly, as reported above it is often the case that a SDLT avoidance scheme has the intended effect that a SDLT1 is not required to be submitted (e.g. because the scheme manipulates the transaction value threshold at which a return is required).

Secondly, the accumulation of the various time limits by which a SRN is required to be issued by HMRC and passed on by a promoter to clients (and potentially also by client who is an intermediary) would result in many cases in the end user not receiving the SRN until after the due date for filing form SDLT 1 has passed.

Thirdly a number of amendments would also have to be made to form SDLT1 to capture the necessary information. This would impact on a much wider customer base than HMRC wishes to target, thereby creating an additional compliance burden for the compliant majority.

Consequently, it is proposed that the end user would report the SRN back to HMRC using a HMRC form designed specifically for that purpose. This would capture the information needed about users of SDLT schemes, whether or not they are required to complete a form SDLT1, and enable HMRC to better target its compliance activities.

As explained in the Background section, the SRN system was not applied to SDLT in 2005 partly because of concerns that it would apply to a significant number of schemes that were not avoidance. HMRC believes those concerns are no longer justified.

The descriptions of schemes required to be disclosed are being amended so as to target new and innovative schemes only. A 'grandfathering' rule will limit disclosures to schemes that are substantially different from schemes that were made available (i.e. by any promoter) before the date in 2009 when the changes come into force. This rule is expected to keep the number of disclosures of residential property schemes to a minimum. It is also expected to reduce the number of disclosures of commercial property schemes, of which there were 14 in the half year ended 30 September 2008.

HMRC expects that the number of disclosures will be sufficiently small that it will be able to ensure that it does not issue a SRN to a scheme that is not avoidance. Moreover, from November 2008, HMRC can, at its discretion, withdraw a SRN that has been issued, typically where a disclosure relates to arrangements that are not regarded as avoidance, or where HMRC no longer wishes to identify scheme users. Once HMRC withdraws a SRN, promoters or users need no longer transmit or report that number. HMRC informs a promoter when a SRN is withdrawn and publishes the details on its website.

For these reasons HMRC does not believe that the adoption of the SRN system for SDLT will result in a significant number of cases of SRNs being reported in relation to a scheme that is not avoidance.

Option 3: Users of SDLT avoidance schemes to notify HMRC without receiving a SRN from the promoter

If the SRN system is not adopted for SDLT, the alternative way of identifying users of SDLT avoidance schemes would be for the scheme users to provide information to HMRC if the arrangements they are using fall within certain descriptions in regulations. Something similar to this happens with Value Added Tax where the obligation to disclose a scheme falls upon users rather than promoters.

Such a system would have the advantage of removing promoters and intermediaries from the requirement to transmit SRNs. However, it would place an additional burden upon property buyers (not just those buying avoidance schemes) to familiarise themselves with the descriptions to check whether or not the arrangements were reportable. Moreover, it would be inherently difficult to describe the arrangements in such a way that users, who are not generally tax professionals, would know with certainty whether or not their arrangements were included.

HMRC believes that there would be a significant risk of failure to report through error and ignorance, potentially rendering the user liable to penalty action. There would also be a risk that some property buyers would adopt a safety first approach and send in unnecessary reports.

One further problem is that, because of the shortness of the window following the land transaction in which HMRC can open SDLT enquiries, HMRC might have considerable practical difficulties in keeping the descriptions up to date by means of amendments to regulations.

This option would, like Option 2, require some method outside form SDLT1 for the scheme user to report the information required because a number of avoidance schemes are intended not to result in a return. If a return were to be required, this would impact on a much wider customer base than HMRC wishes to target, thereby creating an additional compliance burden for the compliant majority.

Overall HMRC believes that this option would be less effective and more onerous for users than Option 2. However, HMRC would welcome comments and suggestions from any respondents who would prefer Option 3.

Evidence

The purpose of disclosure is to close information gaps. Consequently it follows that HMRC will not already have perfect information about the number and types of schemes, and the users of those schemes, that disclosure seeks to obtain. However, HMRC does have evidence about the marketing of avoidance schemes aimed at high value residential property. That evidence is supported by the information that has been provided by a number of external stakeholders.

Further Analysis of Option 2

Cost and Benefits

Impact on HMRC

The main impacts on HMRC will arise from:

- amendments to secondary legislation;
- updating guidance on how to comply with the new obligations;
- an increase in notification of SRNs;
- making enquiries into returns.

It is expected that the associated costs will be absorbed with existing budgets and resources. The main uncertainty concerns the number of SRNs HMRC might receive and the consequences of opening enquiries into those cases. HMRC is mitigating that risk in two ways. Firstly, it is using the consultation to ensure that disclosure is restricted to the relatively small number of schemes that are new and innovative. Secondly, it is developing a project working methodology for SDLT that will prioritise tax risks and deploy resources more efficiently. There is likely to be some offsetting reduction in the costs currently incurred in trying to identify users of schemes and target enquiries with insufficient information.

Impact on Promoter and Users

- Many promoters affected by these changes will already be familiar with the commercial property rules and will have systems in place to ensure compliance with those rules. Changes to the descriptions of schemes to be disclosed should result in fewer disclosures of commercial property schemes. Where a scheme is disclosed, the promoter will additionally have to notify the SRN to clients who implement the scheme, using the designated HMRC form. Clients who are intermediaries, must additionally pass the SRN on to the end user using the designated HMRC form.
- There may be some promoters, primarily lawyers, who specialise in residential property who are not already familiar with DOTAS. HMRC expects that the limitation to new and innovative schemes affecting residential property of at least £1 million will minimise the

number of such promoters affected. In particular, it is neither intended nor expected that ordinary conveyancing solicitors will incur a disclosure obligation because they will not ordinarily be scheme promoters. Those promoters who are affected will have to introduce new systems and familiarise themselves and their staff more generally with the DOTAS rules.

- Users of disclosed SDLT schemes will be required to complete a specified form notifying HMRC of the SRN and certain other information within 30 days of either receiving the SRN, or entering the first land transaction forming part of the arrangements, whichever is the later.

Impacts

The aim of the measure is to provide increased transparency about the marketing and use of schemes seeking to avoid SDLT on commercial and residential property. Tax avoidance distorts competition by limiting the ability of those who do not engage in avoidance to compete fairly. To the extent that this measure counters avoidance it will increase competition in the property market.

Businesses of any size can sell and buy avoidance products and the objective of providing a level playing field between scheme promoters and fairness for taxpayers precludes excepting small businesses from the measure. However, HMRC does not expect the measure to have a significant effect upon small businesses either in absolute terms or proportionately. **HMRC is especially keen to hear from small businesses who may be affected.**

The measure will not create any new criminal or civil penalties. However the effect of increasing the scope of disclosure to residential property will increase the number of promoters liable to a civil penalty for failing to notify a scheme as disclosed within the time limits. The effect of adopting the SRN system for identifying users of disclosed schemes is twofold. Firstly promoters and become liable to the existing penalties for failure to pass on a SRN within the time limits. Secondly, users become liable to the existing penalty for failure to report a SRN and associated information to HMRC within the time limits.

Some measure of the numbers affected in the commercial property sector can be judged by reference to the 14 commercial property schemes disclosed to HMRC in the half year ended 30 September 2008. The measure is expected to reduce this number because the 'grandfathering' measure in the new descriptions. Most commercial property schemes have a single user or a very small number of users.

HMRC believes that most avoidance schemes marketed to residential buyers originate from a small number of promoters. We think it likely that some 10 to 20 specialist advisory firms are involved currently and would likely to be affected in future. In 2008 there were about 12,000 residential transactions in the UK involving property above £1m. The number for 2009 is expected to be significantly lower due to the downturn in the housing market. Only a proportion of those transactions will involve an avoidance scheme. Overall this is highly uncertain, and subject to allowance for the effects of grandfathering we estimate that around 500 buyers who were clients of the specialist advisory firms would be affected.

If Option 3 were to be adopted, then the number of customers potentially affected is much higher than Option 2, and the burden on the customers, or more likely a wider range of agents acting for the customers, would be markedly higher. There are volume and costs effects. Volume effects because more customers would be brought into the process; and probably more seriously the unit costs would be much higher in Option 3 as the learning and completion costs of handling the forms would be spread across a substantial number of customers and agents.

As a simplification in costing Option 3, all the £1million + transactions would require careful consideration, and some consideration might apply to other transactions just below the threshold. We estimate that perhaps 5 times the number in Option 2 would be advised to submit a form for safety, that is 500 as in Option 2 and a further two thousand more marginal cases where the advisor is not sure and errs on the side of caution. We think that the unit costs borne

by the advisors would be at least twice those in Option 2 and we estimate that perhaps some 100 to 200 advisors would be drawn in. Drawing volume and unit cost effects together we see at least a ten fold effect on the admin burden. The bottom line is that Option 3 is cautiously assessed as having more than ten times higher overall admin costs than Option 2.

Costs in HMRC would also be higher as more unnecessary forms are handled in Option 3 than in Option 2, though this may be only of the order of a 2-fold effect.

We would welcome confirmation from consultees that this order of magnitude effect in Option 3 is about right.

It is not expected that the measure will have a disproportionate effect on rural areas. In 2006-07 nearly 75% of residential property transactions over £1 million took place in London and the South East of England.

The measure is in accordance with sustainable development principles and is compatible with the Human Rights Act. It will not significantly impact on:

Carbon costs

Environmental issues

Health

Race Equality

Disability Equality

Gender Equality

Implementation Plan

Following this consultation a further implementation Impact assessment will be issued.

Implementation will be by means of statutory instruments subject to the negative Parliamentary procedure. It is expected that they will come into force towards the end of 2009.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

The 'Standard Cost Model' (SCM) has been used to derive an estimate of the costs to business of complying with HMRC obligations to disclose information to HMRC or to third parties. The SCM considers which activities a business has to do to comply with an HMRC obligation, how many businesses have to comply, and how often they need to comply. The SCM considers the burdens applying to different sizes of business.

The SCM estimates the costs of using agents; the costs of undertaking work in-house; and the costs of actually transmitting the information. The SCM does not consider one-off costs or transitional costs. The SCM does not consider costs which a business would have incurred anyway had the relevant HMRC obligation not existed. It considers the costs which apply to a normally efficient business and the costs to businesses which comply. The SCM does not consider wider compliance cost issues, such as the costs of business uncertainty, cash flow costs, or the costs of deciding whether or not to do something.

The Impact Assessment template requires SCM figures to be presented in May 2005 prices, as admin burden reduction targets relate to a May 2005 baseline. The Impact Assessment also uplifts those figures to current day prices.