

Taxing Times: HMRC set to fine firms £3,000 for “assisting in preparation of incorrect SDLT returns”

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Her Majesty's Revenue & Customs (“HMRC”) has announced that it intends to start imposing the maximum penalty of £3,000 in respect of online and paper SDLT returns under section 96 of the Finance Act 2003, due to worryingly high numbers of errors on submitted SDLT returns.

I have been attending the HMRC WTSG Committee meetings at the Treasury in my capacity as an ILEX Council member for about 5 years or so. Things have changed. Under previous governments the mood was often relaxed, the atmosphere gentle and the function and purpose of the committee was to provide a forum wherein property lawyers and their representative organisations could discuss the finer points of the stamp taxes process, suggest amendments to the online filing system, report errors or trends which may be of concern and attempt to identify anomalies relating to the practical application of the rules relating to Stamp Taxes as outlined in the Finance Acts. The last year has seen a shift in the dynamics and concerns of the WTSG Committee.

There has been more discussion regarding tax avoidance and the rise of the Stamp Taxes avoidance schemes which many a Conveyancers would have heard of or come across. There has been a distinct focus on restructuring to reduce overheads. You may have heard of “the replatforming” of the entire tax process onto a single system (and that includes all the taxes HMRC deals with) which has been a major project of late. This has taken up much of HMRC's time and left little room or resource for the traditional nit-picking, not least because unlike before, the committee cannot make a recommendation which would only affect the system or process as regards SDLT. The new platform is wholly and fully integrated across all taxes. Therefore any small change affects all, plus the smallest of changes to the complexity of the code and infrastructure comes with a huge cost implication. This means that HMRC's stance in relation to SDLT returns which are not properly completed (and filed late as a result), or which are filed online but include “obviously inappropriate” information has become more hard-line. It is therefore important that Fellows, Members and practitioners are made aware of this.

“HMRC has become aware of a small but significant number of SDLT1 returns where information is being provided which is quite obviously incorrect. This applies to both electronic and paper filing” HMRC 14, 09 2011

This relates to data entry by practitioner firms, who, for whatever reason, appear to be failing to follow the SDLT guidance. One key example is box 49 and 51 of the SDLT1:

- Box 49.1 - in a worryingly increasing number of cases the National Insurance Number (NINO) being supplied is the example number displayed in the online system, not that of the actual purchaser. HMRC need both the date of birth and NINO of the first purchaser.
- Box 51.2 - there appear to be an increase in entries such as the word ‘passport’ or what are clearly client file reference numbers are being entered, with ‘UK’ in box 51.3.

“We would much appreciate the co-operation of all customers in ensuring that they follow the guidance so as to ensure that their returns are correctly completed”

HMRC September 2011

HMRC have responded to these issues by saying “HMRC SDLT guidance is quite clear on what data should be entered into these parts of the return. This can be found on page 41 of the published SDLT6, which can also be accessed online at <http://www.hmrc.gov.uk/so/sdl6.pdf>” but remember, the SDLT6 gets updated regularly, so the one in your bottom drawer maybe quite out of date!

Furthermore, HMRC have confirmed “Whilst we understand that the requirement to provide this data may mean a small amount of additional work on the part of our customers, the provision of obviously incorrect data is unacceptable. If this continues we

will have to consider using our compliance powers: submitting a return with obviously incorrect data does not satisfy the filing requirements and consequently a penalty situation may arise. If we consider imposing penalties these will be under FA 03 S96"

Section 96 of the Finance Act 2003 relates to the Penalty for assisting in preparation of incorrect return. Under that section "a person who assists in or induces the preparation or delivery of any information, return or other document that— (a) he knows will be, or is likely to be, used for any purpose of tax, and (b) he knows to be incorrect, is liable to a penalty not exceeding £3,000."

At the committee meeting it was made very clear that HMRC would, if SDLT's continued to be returned in this fashion seek to impose the maximum penalty they were entitled to, being £3,000. It is therefore important that all property lawyers, residential or commercial, ensure that they are fully up to date with the current guidance and in firms where SDLT returns are detached from fee earner's to assistants, that the correct level of training and supervision is provided.

The issues relating to boxes 49, 50 and 51 are not in themselves complex. Indeed, the current guidance seeks to help ensure that completing these particular boxes is as straightforward as possible, and it may be that the fact there are a significant number of returns coming through containing information which is "quite obviously incorrect" has vexed HMRC and their resources to the extent that a hardened line and the threat of £3,000 penalties is necessary to ensure compliance by the profession.

Box 49 of the SDLT asks for the National Insurance (NI) number of the first purchaser. If the first purchaser does not have NI number, then Box 50 asks for a VAT registration number instead. If the first purchaser does not have a VAT registration number, then Box 51 has provision for alternative acceptable references. It is a process of elimination. It appears, however, that in many cases returns where a first purchaser who does in fact have an NI number are not having the NI number entered in Box 49 and consequently practitioners are relying on Box 51. To my mind, as to the HMRC, it is inconceivable that an adult purchaser who is not a body corporate but is a UK citizen does not have an NI number, but does have a passport. To assist Fellows, Members and practitioners, I want to briefly look at the guidance so as to ensure there is clarity on the issue.

The guidance for Box 49 states:

"You must answer this question if the first named purchaser is an individual who has a permanent National Insurance number. In all other cases you must complete either question 50 or 51. The National Insurance number is formed of 9 characters without any spaces. The first 2 characters must be letters, the next 6 numeric and then a final letter. If the final letter is not known, leave the last box blank. Do not enter a temporary National Insurance number, initial letters TN, instead leave blank. If you have given a National Insurance number you must give a date of birth for the first purchaser (the person for whom you have given a National Insurance number). If you have not given a National Insurance number the date of birth must be left blank."

Firstly, in many cases, returns are being submitted which actually contain the sample NI number that appears in the blank version of the SDLT1 online. This means that rather than sending a completed return with the first purchaser's actual NI number, an incomplete return containing only the sample NI number that was already there is being submitted. To my mind, this is simply unacceptable as you either have an NI number for the first purchaser, or you don't, but either way, if you are completing a tax return on behalf of a client, then understanding how to complete the return correctly is not only essential, it is a duty. HMRC need both NINO and date of birth for a return to validate and be processed. Practitioners are supplying a NINO without a DOB, or vice versa, and such a return will be sent back to them for correction.

The guidance for Box 50 (VAT registration number) states:

"Do not answer this question if you have answered question 49. Instead go directly to question 52. If you have not answered question 49 and the first purchaser does not have a VAT Registration Number, go to question 51."

Again, relatively straightforward. If you have your client's NI number and have input it in Box 49, you move on to Box 52. If your client does not have an NI number nor is VAT registered, then you ensure that Box 50 is blank and you move on. Remember, this is an elimination process after all! HMRC need a valid VAT reference number for a return to validate and be

processed. Practitioners are supplying references which are not VAT reference numbers and such a return will be sent back to them for correction. A VAT reference number is 9 digits long, has no alpha characters and does not start with '00'.

The guidance for Box 51 (UK company or partnership UTR number or non-UK tax reference) states:

"Do not answer this question if you have answered either question 49 or question 50. Instead go directly to question 52. If you have a UK company or partnership UTR number, enter it here. If you do not have either of these numbers, give any tax reference or other registration number for the purchaser in part 2 of this question and the place (for instance, as appropriate, the town, city, state, canton etc. as well as country) that issued that reference or registration."

Once again, the guidance seems to my mind to be pretty clear. If you have completed Box 49 or 50, you don't need to complete Box 51, but if you didn't have an NI number or a VAT number then you should complete Box 51. HMRC need UK company or partnership Unique Tax Reference Numbers (UTRNs) for a return to validate and be processed. Practitioners are supplying references which are Company Reference Numbers [CRNs - maximum 8 digits and supplied by Companies House] and not company or partnership Unique Taxpayer References [UTRNs - 10 digits - supplied by HMRC] and such a return will be sent back to them for correction.

At this stage, however, I need to stress that "not having an NI number or VAT Registration number" does not simply mean that it is not on your file. There has to be a degree of enquiry on your part as a practitioner to determine whether your client has an NI number or, if not, a VAT registration number, before you get to Box 51. Box 51 is there for this purpose. It is not there as a tool of convenience. Many firms (and I have ensured this in firms where I have run property departments) have detailed KYC ("know your client") checks at the outset of taking instructions. This includes (or ought to include) proof of ID, which in itself ought to mean the usual money laundering ID checks, but also asking for an NI number, or VAT registration number. HMRC need only one data set for a return to process: only one of questions 49, 50 or 51 need be answered, as is made clear in the guidance (SDLT6 page 41). Answering more than one data field will cause the return to reject at the processing centre. HMRC are currently preventing such rejections being returned to customers by manually inputting rejected returns in Birmingham but will have to reconsider taking this corrective action if the current rates of rejection continue.

If the first purchaser is a person and they are a UK resident, then they will have an NI number (99% of the population do). If the first purchaser is under the age at which an NI number is issued, or in the tiny minority of often very elderly people who do not however, then you leave Box 49 blank. Not only do you leave it blank, but on the online version, you ensure the sample NI number is removed. If the first purchaser is a body corporate, they won't have an NI number in any event.

Instead of an NI number, the next best alternative is a VAT registration number. Now to my mind, a person who is either a minor or very elderly and has no NI number is highly unlikely to be registered for VAT. However, if the first purchaser is a body corporate (who will not have NI numbers issued) then you ought to know if they are VAT registered, so you can use their VAT registration number in Box 50. If the first purchaser does not have one because they are not registered for VAT, then you move on to Box 51 as you have eliminated both the NI number and the VAT number as being one with which you can identify the client to the HMRC. I apologise for repeating this, but it is a process of elimination. Box 51 is the last resort box for identifying the first purchaser by reference to either a UK or foreign reference.

So, in relation to a first purchaser who your enquiries and KYC have determined has no NI number and no VAT registration number, in Box 51 you may consider entering a passport number, company or partnership or charity registration number or some other official reference which will identify the purchaser to HMRC. If the first purchaser is a body corporate, for example, but they are not VAT registered, then you should enter the registration number for the company or partnership. The guidance goes on to say:

"If you don't have any tax reference, you will need a reference from HMRC before you will be able to submit a valid return. To get a reference, contact the helpline on 0845 603 0135, explain the position and leave a contact phone number. HMRC Stamp Taxes will contact you within 24 hours and take the purchaser's details. If appropriate, they will give you a reference number, which must be used for this and all subsequent land transaction notifications for that purchaser."

Astonishingly, what has been happening is that rather than following the process of elimination, which ought to be based on the enquiries and KYC conducted as standard on the purchaser in any event (particularly under the Money Laundering requirements), returns are being completed by leaving Box 49 and 50 blank and in Box 51 entering information which is clearly inappropriate. For example returns where the word "passport" and "UK" have been entered in Box 51 (rather than the actual UK passport reference). However, there are no circumstances as I understand it, where a UK Passport could be acceptable in Box 51, because a UK Citizen, unless they are a minor, will have an NI number which ought to be entered in Box 49. This is suggestive that the enquiries and KYC process at some firms is woefully inadequate, or transposing that information to the property transaction file is not occurring. It is therefore perceived as wholly inappropriate to use the words "passport" and "UK" in this regard and effectively amounts to incorrect filing of the SDLT.

If it were appropriate to enter a UK passport in Box 51, then the passport number itself would be the appropriate reference, but I have to say, the volume of instances where the words "passport" and "UK" are entered suggest that it is highly likely that there is fact an NI number for the first purchaser in any event. Now there may be extreme circumstances where the enquiries and KYC may not have been able to obtain the NI number from the client but that does not mean that it cannot be obtained, either from the client's bank, or if there is a mortgage, from the mortgage lender. But it cannot surely be the case that an adult with a UK passport has no NI number!

This has become more of a prevalent issue of late as a result of the replatforming of all taxes onto a new single database. In essence, every return submitted, whether it be SDLT, VAT, income tax etc, is allocated to a single "account" – the single account is the account of the tax payer, but it is intended to be the only account for that individual taxpayer for all future returns. If an SDLT is filed which contains incorrect information then HMRC will be unable to allocate the return to the correct "account" of the tax payer and must create a new account. This new account creation has a cost element attached to it, which, in the cases where the first purchaser does in fact have an NI number, VAT number or company or UTR number, means a duplication, which amounts to a waste of resource (including people). This in turn stretches the resource and budget of HMRC, which as you will be aware, has been under pressure as a result of budget constraints. Put simply, HMRC can no longer tolerate this.

Finally, HMRC are still receiving SDLT1 version 1 return forms despite giving wide publicity to the changes that took place on 4th July, including mailing all known paper filers with a small supply of SDLT1 versions 2s and updated guidance booklets (SDLT6). Version 1 forms are simply no longer valid, are rejected and returned.

I would therefore urge all members and Fellows engaged in property transactions to ensure that they and their departments and support staff are aware that HMRC will be changing its stance in this regard. The last thing you need is to find yourself landed with multiple penalties for £3,000, so please beware, be aware and ensure that all those involved in the SDLT filing process, whether it is online or by paper take the time to complete and submit the returns in accordance with the guidance.



**"Remember, son, these are your tax-free years.
Make the most of them."**