

Tackling the schemers

HMRC is finally fighting back against the promoters of anti-avoidance schemes. Amanda Perrotton explains all

Stamp Duty Land Tax (SDLT), introduced in the Finance Act 2003, is a self-assessed transfer tax charged on land transactions. Similar measures apply for Scotland and Wales. The stamp duty thresholds, which were temporarily increased in September 2022, have now fallen back (as set out in the table below), which means that some buyers will end up paying thousands of pounds more in tax. For residential and commercial purchases, the current rates in England & Northern Ireland from 1 April 2025 are as follows:

Consideration	Rate (paid on portion in band)	Including additional property surcharge
Residential Property		
Upton £125,000	0%	5%
from £125,001 to £250,000	2%	7%
from £250,001 to £925,000	5%	10%
over £925,001 to £1,500,000	10%	15%
Over £1,500,000	12%	17%
Non-Residential and Mixed Land and Property		
Up to £150,000	0%	
£150,001 to £250,000	2%	
£250,001 and above	5%	

Inevitably there are a number of variations, surcharges and reliefs that are available to provide a layer of complexity whether you are staircasing and sub-selling, a first-time buyer, or the purchaser of a large estate with stables and public rights of way. There has been much written over the past few months regarding the stagnation of the property market, the race to complete by the 31 March 2025 and how this will distort figures.

Tom Bill, the head of UK residential research at Knight Frank, expects a dip in activity as demand effectively resets from April. He said: "Buyers coming back into the market with a re-levelled playing field will find that supply is strong, which should keep downwards pressure on prices. Activity should recover by the summer but borrowing costs could be held higher for longer by erratic US trade policy and the inflationary impact of measures like the employer national insurance changes." So, the uncertainty will continue for the coming months.

But in amongst the clamour and noise regarding the rebalancing of stamp duty rates the Spring Statement on 26 March 2025 revealed a very interesting and some say radical measure which if implemented, will effectively criminalise the tax avoidance industry. I for one salute any attempts to properly

regulate the tax industry and call out those who seek to exploit through avoidance schemes, rather than advise.

Between 2003 and 2013 SDLT schemes quickly sprang up, seeking to avoid the higher rates of tax imposed following the introduction of SDLT. These were countered by the Finance Act 2006, which introduced Section 75A Anti-Avoidance Rules, together with the General Anti-Avoidance Rules in part 5 of the Finance Act 2013. HMRC are still pursuing the recovery of unpaid tax as a result of implementation of these schemes, with cases still coming before the Tribunals 14 years later.

Whilst SDLT schemes have bitten the dust, schemes generally continue to be dreamt up and promoted to the significant detriment of those who they are 'sold' to. A notable target for this type of policy would be the promoters of tax avoidance schemes and in recent times the names on many professionals' lips for those to be caught by this have been Property 118 and Less Tax 4 Landlords.

Exploitation rather than advice

Property 118 background

P118 were unregulated advisers who worked alongside Cotswold barristers to promote a scheme they aimed at portfolio landlords, many of whom have numerous buy-to-let properties held in their personal names. The mortgage repayments were killing the profit margins following then-Chancellor George Osborne's tweaks to s.24 in 2016, which meant that from 2017 mortgage interest relief was replaced with a 20% tax credit. Landlords were looking for ways to transfer their portfolios into a company which still benefitted from the relief, without the financial pain of refinancing or triggering CGT and SDLT. That is to say they were prime candidates to be exploited.

P118's scheme suggested that you could enjoy the tax benefits of moving the properties but could keep your existing mortgage held in your personal name. Needless to say, their scheme never went anywhere near a property solicitor, as we would have refused to act without the consent of the lender, but that was the point – exploitation not advice. On a serious note, it was mortgage fraud. For more extensive and comprehensive analysis of the scheme see Dan Nidle's report at <https://taxpolicy.org.uk/2023/09/13/property118/>, but in brief:

The scheme

The landlord sets up a new company, sells its portfolio to this company and receives shares in return. So far so good. Completion is deferred and the landlord keeps the properties in their personal name. Not so good – this is a breach of the mortgage conditions. A trust is created, and the landlord holds the properties as trustee on behalf of the beneficiary company. (Without the lenders consent this is not permitted.) They claimed incorporation relief applied (provided the landlord qualified under the Ramsay terms), and the landlord utilised the SDLT partnership rules (was there a partnership?), so no SDLT was payable, either.

A cursory glance of any set of mortgage conditions would tell you this doesn't work from the lender's perspective, but the tax position will also collapse. Aside from the uplift in income tax and the questionable entitlement to qualify for s.162 incorporation relief, SDLT will also be in point. With no benefit to this structure other than tax savings, it is regarded as tax avoidance.

Is the trust valid

We took Counsel's view on this in May 2024. Individuals we had had discussions with previously about incorporating their portfolio went elsewhere (to P118 or LT4L) after we advised that they would need to have a qualifying partnership to benefit from the SDLT relief, be able to demonstrate that they met the criteria for s.162 relief and would HAVE to refinance the portfolio, or get consent from their current lenders. They were back with tax discovery assessments, following HMRC's Spotlight 63 in October 2023 and the enquiries that started to be sent out by HMRC from February 2024.

Instructed KC concluded that the trust was valid, provided it was signed correctly to comply with s.53(1)(c) of the Law of Property Act 1925, and a transfer of the beneficial interest in the properties had taken place. That is not to say the scheme worked. The validity of the trust certainly meant that the mortgage conditions had been breached. Incorporation relief is unlikely to be available given the premise for the relief is that the 'whole of the assets of the business move to the company'. This wasn't happening if the legal title was being left behind.

What about the SDLT?

A land transaction will prompt the requirements to file an SDLT 1 and any transfer of land attracts SDLT on the full market value at the applicable rate. Partnerships who are incorporating are provided a relief, but this

does not apply to individuals, and the partnership needs to have been formalised and trading. Section 2(1) of the Partnership Act 1890 makes it clear that joint ownership of property and sharing profits is not enough to constitute a partnership.

So, if a partnership cannot be established but the transfer of the title can be, then the SDLT consequences are dire for those part of the P118 scheme as SDLT will be chargeable on the full market value of the portfolio transferred.

Less tax for landlords – background

This company is a slightly different beast. LT4L won the Property Report award for 'Best Accounting and Services 2023'. Unlike P118 they compromised qualified and regulated professionals with a background in tax. They promoted a 'hybrid partnership' scheme, designed to avoid income tax, CGT, SDLT and IHT. Once again, the full analysis of the scheme by Dan Niedle of Tax Policy Associates, can be found at <https://taxpolicy.org.uk/2023/10/04/lt4f/#sdlit>. If possible, this scheme is considered worse than P118 scheme and HMRC have warned that users of the scheme "may have to pay more than the tax they tried to avoid as well as paying interest, penalties and high fees for using such schemes".

Under the scheme, the landlords established an LLP, and a trust was again declared over the properties in favour of the LLP. The landlords establish a company which was a member of the LLP to which most of the LLP profits were then diverted.

Similar claims were made to savings of SDLT, CGT and income tax with the added bonus the entire structure qualified for BPR after two years, and no requirement to notify the lender. The impact of the scheme in reality was that none of it worked.

The landlords were in default on their mortgages, the rental property businesses did not qualify for BPR, and the mixed partnership rules applied. CGT was triggered on the allocation of profits, and for SDLT purposes, any change in profit allocations could result in a greater liability, as each change made SDLT chargeable. The structure was disclosable under DOTAS as it was a scheme.

LT4L stated that SDLT was not chargeable on establishment of the structure as the landlords still owned the property. This is not correct. The transfer of the beneficial interest in the property results in a charge to SDLT on a change in the income profit sharing entitlement under Schedule 15 Finance Act 2003 paragraph 14. This has nothing to do with the changes in capital entitlement. When the company acquires its income profit share this triggers SDLT to become chargeable based upon the market value of the properties relative to the change in income profit share, with no opportunity to claim any relief.

A relevant example arises from an instruction we received to advise clients on unwinding a structure they had implemented, as the resulting tax implications were not as originally anticipated. HMRC has not yet confirmed its position; however, since entering the structure in 2017, the clients have amended profit allocations annually. Each amendment constituted a chargeable change for SDLT purposes, giving rise to a liability under the partnership rules. Notably, if the structure is unwound, this would necessitate a further reallocation of profits, which, in accordance with the applicable legislation and the HMRC manual, is expected to trigger an additional SDLT charge.

What's next for promoters?

Whilst professional advisers are working closely with HMRC on behalf of their affected landlord clients trying to unwind, regularise and settle we have the announcement in the Spring Statement on 26 March 2025, albeit not in the Chancellor's speech itself, that the government are putting forward a raft of anti-avoidance proposals, which if put on the statute books will effectively criminalise the actions of the likes of P118 and LT4L, thereby protecting the naïve, unwitting and vulnerable to exploitation. These measures include the following:

Currently in place is the 'stop notice' that HMRC can issue to a promoter of a tax scheme. If that promoter continues to promote, then such actions will constitute a criminal offence. This doesn't prevent that business closing down and another springing up in its place doing exactly the same thing. The government are proposing a 'universal stop notice' to empower HMRC to issue a notice in respect of a specific scheme which no-one can promote. It is surprising that this power is not already in place.

In addition, they are considering 'promoter action notices' to third parties who facilitate a scheme: "A PAN would apply to individuals and businesses who are providing products or services to promoters of tax avoidance who are using those products or services to facilitate the promotion of their tax avoidance schemes. Examples of relevant businesses could be banks and other providers of financial services, employment agencies, insurance businesses and businesses that promoters use to advertise (including social media businesses)."

This is key. LT4L route to market was via a network of businesses who facilitated the selling of the schemes and in some respects could be seen by the lay person to legitimise the original scheme.

Criminalise breaches of DOTAS which promoters seem to generally ignore or 'claim' that they are not caught by, when blatantly they are. If there is only a financial penalty the imposition of which is delayed until the tribunal makes its decision, then promoters are free to continue selling schemes and taking large fees in the meantime.

There is a provision to target legal professionals as promoters' schemes are usually 'backed' by a barrister's opinion which enables the easy sell of the scheme. The promoter is the client of the barrister, having received tailored instructions which are protected by legal privilege, and HMRC cannot see. The end client to whom the scheme is sold has no recourse to the barrister and given the amounts of fees the promoter has earned they are unlikely to pursue any claim for failure of the scheme.

To conclude

These schemes have created a complicated mess, which will take many years to unpick. HMRC are in no rush to reach a resolution, the delay will play into the hands of the promoters who have already received the majority of the fees charged, and the landlords are left with an enormous tax bill and will be charged additional fees to reach a conclusion.

The proposals put forward by the government are long overdue but will need additional investment if they are to be moved from HMRC's toolbox to a team specialising in pursuing the scheme promoters for the benefit of the public purse.

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