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*berwin leighton paisner

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On-line at last!

As the demand to e-file SDLT returns increases, Simon Thomas outlines the benefits and the limitations of the new system



Simon Thomas is a solicitor in the real estate team at Wiggan LLP

After almost two years of uncertainty with the submission of SDLT returns, a real solution has been found. The Stamp Duty Land Tax (Electronic Communications) Regulations 2005 enabled the commissioners of HM Revenue & Customs (HMRC) to introduce e-filing of SDLT returns from 14 July 2005.

Details

Although July was the supposed date of availability, general ability to register for the service only came on 26 August 2005, and the new facility has been introduced in a low-key manner. This was probably in part due to the fear by HMRC that a deluge of applicants for registration to the new service might bring it crashing down! Lessons have been learnt from the hasty introduction of the regime in 2003, when the enquiry line became oversubscribed.

Interestingly, the on-line service is available for free from HMRC direct, or alternatively, for a small price from private accredited service providers.

Why then should the client pay a service-provider fee (in addition to legals) when there is a free, direct option? In response to this, one such provider (SDLT.co.uk) asserts that:

- its system is off-line while entering the data, so even if the practitioner's (or HMRC's) server is down, which would require refreshing (causing its own problems on many secure websites), the data can still be entered irrespective of such problems;
- the data can be backed up and stored on the practitioner's systems, not just held on HMRC's;
- the practitioner can prepopulate a precedent version for each of forms

SDLT 1 to 4, which means that data such as agent's details need not be re-entered each time;

- no client signatures are needed;
- it integrates into most case management software;
- there are readily available technicians to assist with any IT problems – not something that HMRC's helpline telephone service can boast; and
- an auto-generated file note is produced each time a return is made, providing a paper-based file note as evidence of submission (in addition to the prerequisite client declaration).

One of the best aspects of the ability to e-file is timing. Some returns have come back within 24 hours of submission, whereas paper-based returns have been known to take up to three or more weeks to come back, and then sometimes as a requisition raised by HMRC by mistake due to its own mis-scanning.

The guarantee of not having a requisition raised is therefore another significant improvement – the on-line validation system does not permit submission unless all relevant fields have been filled in.

Although HMRC has recently agreed not to send requisitions in duplicate to the practitioner and the client, future client requests for an update will not see the practitioner having to explain away why the tax return they have filled in for their client has been returned for re-submission.

Another benefit of e-filing, which is not advertised, is the removal of the lost-post/mis-sorting-at-HMRC factor.

'One of the best aspects of the ability to e-file is timing. Returns have been known to come back within 24 hours of submission.'

Usability

The author has trialled the on-line system and it was found to be noticeably quicker than the paper-based version and user-friendly. Clients therefore should benefit from what has, up until now, been a time-consuming and often legally administrative chore for practitioners.

In terms of initial set-up, there is a small degree of faffing; the practitioner must acquire a unique Government Gateway ID, plus a user-name and password once various firm details have been provided. LLPs have had delays

security is only as good as the human element permits.

So far as risk for practitioners is concerned, HMRC can raise investigations into returns made on-line, but a declared authority from the client should ensure that any investigation will not fall at the practitioner's door should it transpire, for example, that client-given misleading information was inserted into the return.

Limitations

At present the on-line service does not cater for all scenarios.

- +99 properties in a portfolio, or +99 vendors or purchasers; and
- deferred payment applications.

E-conveyancing context

HMRC has come to an accord (Memorandum of Understanding between Land Registry & HMRC) to try to drive forward e-conveyancing and e-filing of stamp tax returns, which obviously go hand in hand. That said, in the long term HMRC will hope that the Land Registry will take the lead in consolidating the two processes; this would be the logical endgame if registration in England and Wales is to become instant at completion of a matter.

Pascale Lalonde, who heads up the Land Registry's registration change department, has confirmed that it would be the Land Registry, not HMRC, that would 'control the network', although the detail still needs to be added to the principles at this stage. One of the private submission providers was contacted only a few days ago by the Land Registry for input in advancing this process. The Land Registry is looking into electronically receiving SDLT 5 certificates direct from HMRC – like lenders that have started electronically notifying the Land Registry of mortgage discharges.

With the on-line system at present, the usual hard-copy SDLT 5 certificate is generated and issued to the submitting practitioner, with an initial confirmatory e-mail sent from HMRC, in addition to the receipt with a unique transaction reference number (UTRN). The receipt should be kept safe, as should the UTRN used when making the tax payment, because it enables HMRC to marry up the payment with the on-line return that will already by then have been lodged.

Payment may be made by using the same formats that are presently available, such as by CHAPS transfer, cheque etc. Cheques must be referenced with the UTRN on the back and be accompanied by the usual payment slip – as they ideally should under the 'old' submission methods.

It should be noted that HMRC's original 'print and post' return process was withdrawn from 30 October 2005.

Authority

One of the potentially most helpful, yet risky, aspects to e-filing by the practitioner as agent for the client is that of

A declared authority from the client should ensure that any investigation will not fall at the practitioner's door should it transpire, for example, that client-given misleading information was inserted into the return.

receiving their IDs, though this was not personally experienced, and in the author's case it took only a matter of a few days to receive everything necessary to start filing. A stamp taxes on-line reference number (STORN) and an activation pin are also needed to use the service.

Security

Encryption, coupled with unique reference numbers and passwords, help provide comfort with the security concern of e-filing. As for all filings,

More intricate group relief transactions, for example, should still be directed in paper format with the appropriate cover claim letter to the Manchester (Complex Transactions Unit) Stamp Office.

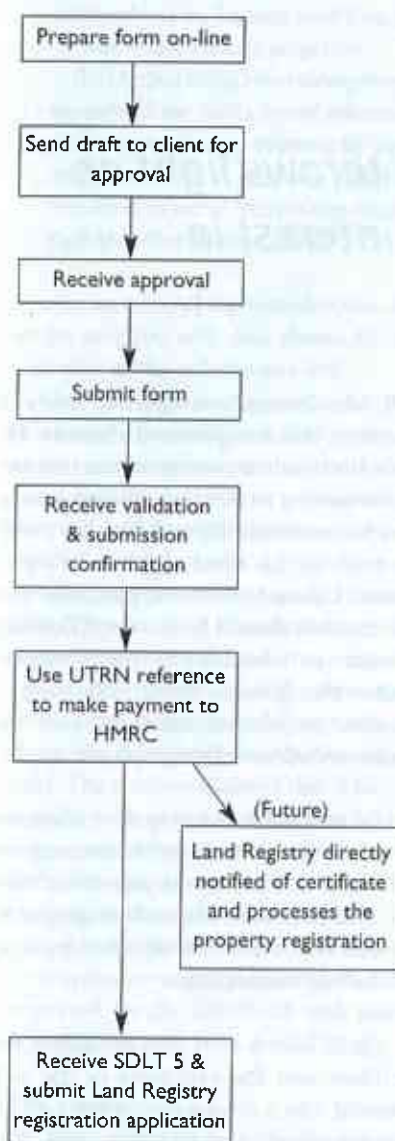
Other examples of where the on-line service cannot currently help include:

- shared-ownership leases;
- linked lease transactions;
- notifications of reversionary leases;

Recommendations for SDLT practitioners

- Register your firm on-line via HMRC and Government Gateway websites.
- Add reference to terms of business, giving client consent to e-filing on their behalf and set up best practice for the client seeing and approving the SDLT form prior to submitting it to HMRC.
- Once registered as a user, fill in the pre-set SDLT forms with your firm's details as agent, and any other common answers pre-set (especially if you choose to use a bespoke accredited provider).
- Prepare the client's return on-line.
- Print off and send the draft return by post or, perhaps better, scan the return and e-mail to the client for approval; await approval back from the client.
- Input the appropriate effective date of transaction, submit the return and await near-instant validation of the form(s).
- Print off the UTRN receipt and number and make the payment to HMRC using the UTRN reference. An e-mail will confirm submission for your records.
- Receive SDLT 5 within one to five days (usually).

The e-filing steps



authority – the taxpayer does not sign the tax return if using the on-line system.

On the plus side, this makes things easier for the practitioner whose client is unavailable – perhaps abroad – to sign. While powers of attorney have served their purpose rather well to cater for this current practical hurdle, clearly such powers require drawing up in the first place, sending out to clients, signing and returning, which lead to additional cost and time delay – and what if a client is not around to sign the power? The on-line regime clearly obviates these issues.

Conversely, if the taxpayer is not signing anything, then who is to say that the practitioner had authority to make the return for the taxpayer? HMRC's advice

is that written authority (a signed declaration) should always be obtained from the client prior to submission, and the client should always see the contemplated return before it is lodged. As a bare minimum, practitioners using the on-line service should ensure that their terms of business include an appropriate reference to SDLT authority to make the on-line submission. This does not overcome the second limb – that the taxpayer should see and indeed approve the completed (albeit undated) form – but modern communications such as e-mail with scanning are sufficient to surmount this.

Helpfully, the on-line form can be prepared in advance of completion and

Practice

Archie Courage, Managing Director of SDLT.co.uk (the first private service-provider to be accredited by HMRC), commented on the take-up by practitioners since on-line inception:

We expected a high demand for this service... This can only be a reflection of just how many firms are suffering from the current paper-based options out there.

SDLT.co.uk currently charges £5 plus VAT per submission, which, given the efficiencies created by the service, is not likely to cause too many clients to

As a bare minimum, practitioners using the on-line service should ensure that their terms of business include an appropriate reference to SDLT authority to make the on-line submission.

printed out, without the completion date inserted. From there scanning and e-mailing can easily enable the client to view the form wherever they are, and approve it prior to submission (this is where HMRC would want to see the client's signed declaration if they did happen to be investigating a particular return). Whether best practice is followed in reality by busy, bulk conveyancers, for example, may be a different matter.

object. Mr Courage believes that the quick take-up by firms of all sizes is a further indication of how badly the old system was working. The recent major petition by the Law Society is another signal of the dissatisfaction with the old system.

The new on-line returns system should revolutionise future SDLT submissions and push practitioners further towards the government's ultimate aim of e-commerce. ■

Summary

1. A new, fully on-line SDLT returns system has been made available in the last two months.
2. As of 30 October 2005 certain older 'print and post' returns will no longer be accepted by HMRC.
3. Clients/taxpayers do not sign the on-line returns.
4. Private companies have obtained HMRC accreditation to enable bespoke submissions via a precedent form version, greatly reducing the time needed to complete a form and guaranteeing there to be no requisitions raised once validated, which takes a few seconds.
5. Users of on-line SDLT return services need to think carefully about risk management and client authority to submit tax returns on the taxpayer's behalf, due to the latter no longer signing off the form. A signed declaration should be obtained.
6. E-conveyancing is being brought a step closer by the new on-line submission service. The Land Registry is currently liaising with some of the on-line SDLT providers to better understand how it can most efficiently set up a link to receive SDLT certificates direct.