Red Flag Update

Important updates for GP practices

STAMP DUTY LAND TAX (SDLT)

For most medical practices SDLT is a cost which they will have to encounter at some point or another.

Acquiring or leasing

SDLT is payable by a person acquiring an interest in land normally by purchase or lease . However, an interest in land is widely defined for SDLT purposes and includes rights over or in respect of UK land as well as the acquisition of a freehold or leasehold of premises. As a result, SDLT can be triggered if a practice pays to change the terms of a lease. The charge will apply if the land and surgery is acquired from a partner although the amount on which SDLT charged may be reduced.

What is SDLT paid on?

SDLT is usually payable on the consideration given to acquire the interest in land although it can be payable on the market value of the land (for example, if it is transferred to an associated company). Consideration for these purposes includes any money. The assumption or foregoing of a debt, as well as the value of services provided directly or indirectly by or on behalf of a buyer. In short SDLT is a complicated and wide ranging tax.

What rate of SDLT would be payable?

Clearly, SDLT will apply if, for example a medical practice acquires a surgery. The acquisition of a surgery will normally attract SDLT at the lower commercial rate (see below). However, if a surgery is located in part of a house the transfer may be treated as a transfer of a dwelling if the surgery rooms could easily be reincorporated into the rest of the house. As such the transfer will attract stamp duty at the higher residential rates. On the other hand if the surgery area has been clearly converted to commercial use and is not suitable for use as a dwelling it will have ceased to be part of the dwelling. As such an acquisition of the house which contains a separate surgery will be treated as the purchase of a mixed use property on which SDLT will be payable at the commercial rate.

(A surgery could be seen as a separate commercial area if machinery such as an X-ray was incorporated into it or planning permission which does not permit that part if the building being used for residential purposes has been granted in respect of it).

The commercial rates are: 0% on consideration of up to £150,000, 2% on consideration from £150,001 to £250,000 and 5% on the part of the consideration above £250,000 so the purchase of a property for £500,000 would produce an SDLT charge of £14,500, a comparable SDLT liability at residential rates is likely to be £27,500

When calculating SDLT on rent, a different approach is taken. Put at its simplest the amount of consideration equals the "net present value" of all rent payable under the lease. This sounds complicated but fortunately HMRC provide a tool on their website which you can use to calculate the SDLT. By way of example if you were to take a new 21 year lease with a rental of £50,000 a year the SDLT payable would be £5,848.

Partnership problems or benefits?

Life can become more complicated if the practice is carried on in partnership. While a partnership will pay SDLT in the normal way if it acquires a property from a third party, the rules surrounding transfers of property between the partners and or the partnership are more complex. As partnerships are in general treated as transparent for tax purposes the SDLT rules seek to achieve transparency by reducing the amount of SDLT on transactions between the partnership and the partners. So for example if A and B were equal partners and A transferred land to the partnership only half the property may be subject to SDLT (on the basis that A is transferring the other half to himself). Similar rules apply when a property is transferred out of a partnership to one or more of the partners.

Pure medical partnerships need not worry?

SDLT can also become payable if there is a change on the basis of which partners share partnership profits. Generally this will not apply to a medical partnership but if the property used by the medical partnership is held by a property partnership which leases the property to the medical partnership, the transfer of partnership rules will apply to the property partnership. This can arise if partnerships merge and the property is held in partnership by one group of partners but it is leased to a wider merged group. In essence if A and B (mentioned above) admit C to the partnership so that they share profits 40:40:20 respectively C will be treated as acquiring 20% of the partnership property. This could result in C being be liable to pay SDLT on 20% of the market value of the property even if it paid nothing for its profit share. If a decision is taken to hold a property outside of the medical partnership for commercial reasons, thought should be given to whether it is better to hold it in a company rather than a partnership.

Who pays?

The partners are joint and severally liable for SDLT (basically, any partner could be liable to pay all the SDLT) although normally it will be paid out of partnerships funds.

As mentioned above the application of SDLT to partnerships can be complicated although it is possible to make savings by structuring the land transactions properly.

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