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Taxman turns screw on stamp duty plans

Even householders who believe they paid the correct sum could face a bill

Anna Mikhailova Published: 28 April 2013


Stamp duty adds to the cost of buying your home (Tetra)

HOMEOWNERS who may have paid the wrong amount of stamp duty are in the sights of HM Revenue & Customs following its success in a recent court case.

The taxman is investigating cases where homeowners are suspected of using stamp duty mitigation schemes, which take advantage of little-known loopholes to reduce the amount of tax paid.

Earlier this month a City banker lost a battle with HMRC over a scheme that used sub-sale relief to cut stamp duty on the purchase of his £2.5m town house. A tribunal ruled that Edward Allchin's technical tax arrangement did not qualify for the relief, making him liable for almost £90,000.

About 190 homeowners who have used such schemes have been investigated and will now have to pay a total of £7m.

The taxman can review purchases made up to six years ago and is sending "discovery letters" to households it suspects may have underpaid.

Stamp duty rates start at 1% on homes worth £125,000 to £250,000 and the sliding scale reaches 7% for £2m-plus properties, or 15% for £2m-plus homes bought by a company.

However, accountants have warned that the focus on stamp duty avoidance has also caught out homeowners who believed they had paid the correct amount of the tax.

In some reported cases, solicitors entered a lower value for the house in the stamp duty tax return, resulting in a reduced payment to HMRC.

Richard Turner, corporate tax manager from Menzies, the accountant, said: "While the majority of property transactions are relatively simple, the more complex the case, the higher the risk of error being made."

How do stamp duty mitigation schemes work?
Law firms selling stamp duty mitigation schemes require buyers to sign non-disclosure agreements to ensure the details remain secret.

However, it is known that most schemes aimed at UK buyers exploit sub-sale relief. Someone who buys a property and simultaneously sells or transfers it to a third party is not liable to pay stamp duty. Rather, it is the third party that is expected to foot the bill, based on the price it pays.

The transaction can be structured so that the property is sold on to the third party — usually a company set up for the buyer — for less than was paid in the first transaction. Such schemes are often promoted by specialist firms, some of which have left clients in the lurch after shutting down unexpectedly. Last year avoidstampduty.org.uk was promising help to get round the levy, but the site no longer exists.

Being identified as a user of an avoidance scheme could have wider and more costly implications. David Truman of Menzies, the accountant and tax adviser, said: "As well as investigating such schemes, HMRC may delve into an individual's wider tax affairs."

Homeowners could also run into trouble with their lenders. Ian Gray from largemortgageloans.com, the broker, said: "If a bank finds out that a client is participating in a stamp duty mitigation scheme, it will immediately withdraw support for the mortgage."

What should you do if you have used a scheme?
The taxman has warned that where it finds "property sale arrangements that have been artificially structured to avoid paying the correct amount of stamp duty, these will be actively challenged, through the courts where appropriate". Truman said: "The chancellor said in the 2012 budget that he would be coming after people who avoid paying stamp duty, and the suggestion was that he would use retrospective legislation if

necessary to stamp out the practice."

HMRC normally has up to nine months and 30 days to query a transaction after a sale has been completed, but buyers are required to keep the paperwork for six years in case it decides to mount a formal investigation. Accountants said inquiries into purchases dating back as far as six years were becoming increasingly common.

If HMRC decides that a scheme falls foul of anti-avoidance legislation, the buyer will be left with a bill of up to 100% of the stamp duty bill and interest on the late payment plus other penalties. Homeowners who have used mitigation schemes should, first, contact the providers to establish that it is still in business. Ask whether it has an insurance policy to protect clients in the event of an HMRC investigation.

Gray said: "You could take the contract and a copy of any insurance policies from the tax adviser to a separate, disinterested solicitor or tax adviser, and get another opinion on the risks you may face."

Claims firms, such as stampdutyhelpline.com, have begun contacting homeowners and suggesting they make a complaint against the solicitor or estate agent that told them about a scheme. Stamp Duty Helpline would not disclose whether it had pursued any claims to a successful conclusion.

Is HMRC targeting other stamp duty avoidance?
The taxman has also been casting a closer eye over more traditional ways of cutting the levy, such as taking off the cost of chattels — movable objects such as furniture — so the purchase price falls into a lower stamp duty band.

Last year HMRC won a case after arguing that chattels deducted from the price of a property had included fitted cupboards. Any items fixed to a property become taxable under stamp duty rules.

Will any other homeowners be affected?
It is the buyer's legal responsibility to make sure the correct return has been filed, not the solicitor's — so the householder would be liable to pay any fine as well as tax owed if an error were uncovered.

The Soliticitors Regulation Authority said any client unhappy with the service they had received should complain to the solicitor and then, if the matter was unresolved, contact the Legal Ombudsman on 0300 555 0333 or legalombudsman.org.uk.

Wealthy hit by property tax

The government introduced an annual residential property tax at the start of the month for high value properties held within companies.

Owners of homes worth more than £2m on April 1, 2012, that are held by a company, partnership, or fund, must pay an annual charge of £15,000 for those worth between £2m and £5m, £35,000 on £5m to £10m properties, rising to £140,000 a year on homes worth more than £20m. Since April last year, homes worth more than £2m that have been bought by a company face a 15% stamp duty charge, a measure introduced to tackle stamp duty avoidance.