

Stamp Duty Land Tax (SDLT) Provisions & Wind Farms

How the provisions work in practice and what Developers need to be aware of

Option Agreements

Very often an Option Agreement will not constitute a “Chargeable Transaction” for SDLT purposes: it is only if the total option payments come to more than £150,000 that an SDLT return must be submitted to the Inland Revenue. In the more normal situation, where option payments are less than £150,000, we shall prepare a two page self-certificate form confirming that no SDLT return is required.

If however the option payments do exceed £150,000 then an SDLT return must be submitted to the Revenue within 30 days of the ‘Effective Date’. This will usually, but not always, be the date the last party signed the Option Agreement. The SDLT return must contain details of all option payments due under the option agreement, which typically consists of the main option fee and any fee for extending the option period. The Developer is invariably responsible for payment of the SDLT as the party acquiring the interest in land.

In practice, we will send the self-certificate form or the return to you for signature at the same time as we send you the option agreement for signing.

What we require you to do:

- Sign the self-certificate form or SDLT return and the option agreement and return both to us as soon as possible after signature. **An SDLT return (but not a self-certificate) must be submitted to the Revenue within 30 days of the Effective Date (normally the date when the Developer signs) failing which the Revenue will impose penalties and interest.**
- As soon as possible let us know whether the option payments are subject to Value Added Tax.
- If SDLT is payable (we shall advise you here) put us in funds for the SDLT amount as soon as possible.

Entering into a Lease

When the option is exercised and a Lease entered into, it is necessary to submit a (further) return to the Revenue. The Option Agreement and the Lease are linked transactions. This means that all prior option payments must be declared within the SDLT return for the lease.

The Revenue are interested in all payments due under the Lease, including disturbance payments and minerals royalties, if applicable. Since, at the time of entering into the Lease, the rent is contingent upon the export of electricity, it is not possible to provide details at the start of the Lease of the actual rent that will be paid. Instead, **the Revenue seeks your “best estimate” of the rent that will be paid in the first five years of the Lease.** A best estimate of any other contingent payments (typically minerals royalties) is also required.

What we require you to do:

- Confirm exactly what payments have been made to the Landowner under the option agreement.
- Let us know which option and lease payments are subject to Value Added Tax.
- Provide us with a note of your **best estimate** of what the rent during years 1 to 5 of the Lease will be.
- Sign and return the SDLT return to us as quickly as possible.
- Put us in funds for the amount of any SDLT payable as soon as possible after our request.

At the end of Year 5 of the Lease

At the time the Lease was entered into, you will have provided us with your best estimate of the rent to be paid in years 1 to 5 of the Lease. At the end of year five, the IR require that, now that the rent paid during years 1 to 5 is known, you inform them of exactly what rent has been paid to the Landowner. Consequently, it is necessary for you to submit a further SDLT return at the end of year 5 of the Lease.

The IR use the highest rent in any given 12 month period during the first five years as representing the annual rent for the remainder of the Lease, and the basis for the final calculation of SDLT. A comparison is then made between :-

- a) the SDLT (if any) that was paid at the start of the Lease (when the projected rent and other payments were estimated) and
- b) all sums actually paid during the first five years of the Lease.

An adjustment is then made and it is likely that either a further balance of SDLT will be due or alternatively, the Revenue will make a refund of any SDLT overpaid. Interest is payable upon such sums that were overpaid or underpaid. Current interest rates are 2.5% for repayments by the Revenue and 6.5 % for underpayments.

The good news is that the Revenue is not concerned with any increases in rent after year 5 and no further returns will have to be submitted.

What we require you to do:

- Confirm the actual rent paid to the Landowner during the first **five** years of the Lease.
- Confirm the highest rent paid in any given twelve month period during the first five years of the Lease.
- Make diary entries to review matters in plenty of time prior to the fifth anniversary of the date of entry under the lease.

The SDLT provisions are complex and advice should be sought.

If you require advice on a specific point please contact :-

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