

## Commentary

Practitioners, as well as being lawyers must also be unpaid tax collectors. In fact the involvement of stamp duty land tax in many transactions is the reason that this kind of question could well appear. The importance of this question is that, if you know the area of the law concerned, you can earn high marks without having to spread the knowledge in your answer too widely. In this case the amount of marks, out of 20, are shown in the body of the question. Accordingly, apportion your time in the same proportions so that the section that earns the most marks enjoys the main thrust of your time and effort.

Apart from indicating in your answer the need for the prompt payment of stamp duty land tax and registration, it is important to also highlight what the position is if a client fails to pay the stamp duty land tax (and as a result fails to register a purchase deed; you will see that this is needed in section c). Always consider the ramifications of oversights, as the examiner will want you to show an understanding of all the sides to the scenario set out in the question.

This question also contains another example of a problem requiring you to comment on what has not been highlighted in the question as well as the obvious matters for you to consider in your answer. The question seems to be about just stamp duty land tax but there is more to the third section as will be shown from the answer set out below. You will need to address more than just the tax angle to score well.

You will need to construct your answer in three parts thereby addressing the individual units in the body of the question. You will also need to advance evidence to back up your assertions particularly when dealing with information that has not necessarily been mentioned or referred to in the question.

## Suggested answer

**a)** Stamp Duty Land Tax (SDLT) is a compulsory tax that is payable on the value of a transaction. For transactions up to £125,000 the tax rate is at zero for residential property and £150,000 for commercial or non-residential property. It is assumed that this property, judging from the address, is residential. Even if it is not the answer will be the same, namely that no stamp duty land tax is payable, but an SDLT1 (the stamp duty land tax return) must be completed and signed by the taxpayer (the buyer) and then sent to HM Revenue & Customs. Returns must be filed even where the value of the transaction falls below the £125,000/£150,000 threshold. If a transaction is chargeable to tax then the tax at the correct rate must be paid, (s.42 Finance Act 2003).

**b)** It is true to say that the threshold figure for the payment of stamp duty land tax in residential cases is at present £125,000. However, that does not mean that if you apportion a purchase price between properties so as to allocate an amount to each property of less than £125,000 that there will not be a stamp duty payable. If the transaction effected forms part of a larger transaction or series of transactions in respect of which the amount or value or aggregate amount or value of the consideration exceeds £125,000, then tax is payable on the aggregate amount or value. As each transfer forms part of a larger transaction each transfer would attract stamp duty land tax at 2% above £125,000 and up to £200,000. (There is no SDLT to pay on the first £125,000). The buyer

must complete stamp duty land tax returns. The return includes a question about allied transactions and the buyer must certify the truthfulness of the return (question 13 on the form asks, "Is this transaction linked to any other?" If it is the buyer must give the total consideration for all linked transactions). Consequently it would not help to make each property the subject of a separate contract between the parties, as this would be considered to be a series of transactions that would again be caught by stamp duty land tax. Furthermore the buyer has purchased two properties. If he intends to live in one then the above tax rates stay the same. However, the second property is an additional home (or perhaps buy to let) and therefore attracts extra SDLT at 3% up to £125,000 and 5% above that figure to £250,000.

**c)** Paulene Grain has two major difficulties facing her that will inhibit her wish to sell the property quickly and move abroad. First, no stamp duty land tax has been paid in respect of the purchase transaction, and secondly the title has not been sent to the Land Registry for first registration. Until both these processes have been completed she will be unable to prove title and consequently will not be able to sell.

Dealing first with the failure to pay stamp duty land tax, she completed the purchase recently at a price of £170,000. Stamp duty land tax should have been paid within 14 days of the completion of the transaction. Until the duty is properly paid she cannot obtain from the Revenue a certificate of payment. This certificate of payment is vital because without it the Land Registry will not register any registration application. Ms. Grain needs to immediately complete an SDLT1 form, the stamp duty land tax return and sign it and send it to the Inland Revenue (Stamp/Taxes MSD), Comben House, Farriers Way, Netherton, Merseyside L30 4RN. If a return is filed late the buyer will be liable to a fixed penalty of £100, or if more than 3 months late, £200. The buyer may also be liable to a tax-related penalty, not to exceed the tax payable. She is plainly over the time limit for stamping purposes and as such until the duty is paid the freehold title will be unacceptable to a buyer.

Turning now to the question of registration, the property is in Brighton and is thus in an area of compulsory registration, as all of England and Wales has been compulsorily registrable since 1990. We have checked the title and it is in order and we must therefore assume that there are no other dispositions prior to the conveyance to the client that might have induced first registration. This conveyance will certainly induce first registration being a transfer for value of the freehold estate. Obviously the client will need to pay the stamp duty land tax. Thereafter the title documents will have to be sent to the Land Registry with the necessary registration fee. If an application for first registration is not made within two months of the date of the deed in theory the buyer loses his or her right to that legal estate. However, a late application can be made and if the Land Registry accepts it then the applicant will eventually receive a title information document confirming their ownership of their legal estate. Again, it is clear from the facts that the client is out of time for the submission of the registration application and as such has no title to sell. Section 6 of the Land Registration Act 2002 imposes a requirement upon an estate owner to register within two months of the date of the conveyance or transfer to the new estate owner. Should an estate owner fail to comply with section 6, section 7 provides that a transfer will become void. Should this occur then the transferor would hold the legal estate on a bare trust on behalf of the transferee. In this case our client wants to sell quickly and move abroad. Accordingly once the stamp duty land tax has been paid the registration

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application should be made using form FR1. A letter explaining the reasons for the late application could be sent with the other deeds and documents. Once the application has been successfully concluded title can be proved and the sale can proceed and the client can then successfully move abroad.