



Stamp duty land tax –

BACK TO BASICS

Stamp duty land tax was introduced in December 2003, creating a bespoke tax on land transactions in place of the 300 year-old stamp duty. What started as a complicated tax has been made more abstruse by an almost continuous process of amendment. What follows is a basic introduction to SDLT.

Basis of charge

There are three key elements in the charge to SDLT:

1. The acquisition;
2. of a chargeable interest in land;
3. for chargeable consideration.

Acquisition and chargeable interest are widely defined to ensure that almost every transaction that effects or may permit the passing of economic benefit

or value in land, is caught. SDLT is potentially applicable whether an acquisition takes place by agreement of the parties, operation of law, statute or court order and whether it affects freehold land, a leasehold interest or any other estate, interest, right or power over UK land.

Rates of charge

SDLT is chargeable at 1%, 3% or 4% on the chargeable consideration paid for a chargeable interest in land. These rates apply to almost all land interests, and in broadly the same way to a premium paid on the grant of a lease (see Box 1).

A distinct charge applies to tax the rental element of a lease at 1% (see Box 2).

The rates of charge vary between

residential and non-residential property. In most cases it is easy to determine whether property is residential or not. Specific rules apply to transactions involving multiple dwellings.

Chargeable consideration

Finance Act 2003, Sch 4, Para 1 defines chargeable consideration as:

‘any consideration in money or money’s worth given for the subject matter of the transaction directly or indirectly by the purchaser or a person connected with him’.

This wide definition includes not only an amount actually paid for the interest in land, but also VAT on the purchase price (resulting in tax on a tax) and any debt released or assumed by the purchaser.

To most people, SDLT is simply ‘what you pay when you buy a house’. In practice, as *John Feaster* explains, the tax has a much wider application

The value of works or services a purchaser provides may also be included as chargeable consideration, although works will not count if undertaken after the date of acquisition on land that the purchaser acquires (the works exemption).

Although in general SDLT is applied on the basis that actual consideration is the same as chargeable consideration, certain scenarios result in a deemed market value charge. These include:

- an exchange of land interests;
- certain acquisitions and disposals of partnership interests; and
- the acquisition of a land interest by a company connected to the vendor.

In such cases an appropriate valuation method must be adopted to guard against the stamp office raising a discovery assessment.

Liability to pay

The purchaser is liable to pay SDLT arising on a land transaction.

If there are two or more joint purchasers, any liability to pay the SDLT is joint and several. This also applies to ‘responsible partners’ acting for a partnership entering into a land transaction.

Tax due from a corporate purchaser can be recovered from the ‘proper officer’ (the secretary or person acting as secretary).

Timing of payment

A land transaction return must be delivered within 30 days of the effective date of a land transaction, along with payment of the amount of SDLT due.

The effective date of a transaction is the earlier of:

- date of completion; and
- date of substantial performance of a contract.

In practice the concept of substantial performance is important. Although

1: Rates of SDLT

SDLT on residential land or property – freehold or leasehold

Purchase price/lease premium or transfer value	SDLT rate
Up to £125,000	Zero
Over £125,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000	4%

SDLT on non-residential or mixed use property or land – freehold or leasehold

Purchase price/lease premium or transfer value	SDLT rate
Up to £150,000 – annual rent is less than £1,000	Zero
Over £150,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000	4%

2: SDLT on rent

SDLT is charged on the net present value of a lease using the statutory formula:

$$v = \sum_{i=1}^n \frac{r_i}{(1+T)^i}$$

- ri** is the rent in respect of the year;
- i** is the first, second, third, etc year of the term;
- n** is the term of lease; and
- T** is the temporal discount rate (currently 3.5%)

The rate chargeable is determined in accordance with the tables below.

SDLT on rent for new residential leases

Net present value of rent	SDLT rate
Up to £125,000	Zero
Over £125,000	1% of value that exceeds £125,000

SDLT on rent for non-residential or mixed use property or land – new leases

Net present value of rent	SDLT rate
Up to £150,000	Zero
Over £150,000	1% of value that exceeds £150,000

A small liability to SDLT may involve a complicated set of estimated and amending calculations

conceived to specifically prevent 'resting on contract' stamp duty structures, substantial performance must be considered in all land transactions preceded by an agreement for sale/lease.

An agreement is substantially performed when:

- (a) the purchaser or a person connected with the purchaser takes possession of the whole, or substantially the whole, of the contract's subject matter; or
- (b) a substantial amount of the consideration is paid or provided.

Stamp Office guidance provides that possession is obtaining the 'keys to the door' or becoming entitled to rents; a substantial amount of the consideration means 90% or more. The following example considers the application of substantial performance in practice. *See example 1.*

Leases

SDLT is charged on the net present value of a lease using a statutory formula (see Box 2). The effect of the formula is broadly to charge SDLT (at the rate of 1%) on the discounted value of rents over the entire term of the lease.

Difficulties arise where rent is variable, uncertain or contingent (eg, a rent review in the first five years of the term); where the term of a lease is indefinite; or where the tenant provides consideration other than rent or a premium (eg, an agreement to do works).

Generally where the amount of rent for the first five years of the term of a lease cannot be ascertained at the time of grant, a reasonable estimate must be made of the amount of rent payable in each of the first five years. The highest estimated rent payable for

any 12-month period in the first five years is then projected forward for the remainder of the term. This estimate forms the basis of the net present value calculation to ascertain the SDLT payable on grant.

The subsequent adjustment of rent after the first five years of the term can then give rise to a further charge to SDLT if the increase in rent is abnormal.

In practice, even straightforward leasehold transactions can result in a complicated calculation and an administrative challenge, as demonstrated by the following example. *See example 2 below left.*

Reliefs

A significant number of reliefs are available to reduce liability to SDLT.

Transactions involving charities, compulsory purchase, registered social landlords or companies in the same 75% corporate group are all potentially eligible for relief. There are also relieving provisions for (among others) the acquisition of residential property in a disadvantaged area, zero carbon homes, acquisitions by house-building companies and the leaseback element of a sale and leaseback transaction.

In almost every case, detailed conditions must be satisfied to claim the relevant relief.

Conclusion

It is not possible to summarise SDLT comprehensively in a short article. However, I hope I have provided the reader with an introduction to key elements of the tax, along with a flavour of some of the complications that can arise in ostensibly straightforward land transactions.

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Example 1

A housebuilder exchanges contracts with a landowner to acquire land for development. In advance of completion, the housebuilder is granted a licence to carry out site survey and preliminary works.

Although a question of fact, it is likely that the licence granted to the housebuilder results in possession being taken and substantial performance of the agreement to purchase. The key determinant will be the nature of the licence granted and whether this entitles the housebuilder to occupy the site, albeit on a temporary basis.

If there is substantial performance, SDLT will be due within 30 days of possession being taken. This could be significantly earlier than completion, and may come as a nasty surprise to the housebuilder, who will have to find funds to cover the SDLT cost.

Example 2

A lease is granted for 10 years with a base rent subject to open-market rent review in year three and an additional annual rent calculated in accordance with turnover.

A land transaction return must be submitted within 30 days of grant, along with payment of the SDLT due. SDLT will be calculated on an estimate of rent, taking account of the projected third-year rent following review and estimated turnover.

Within 30 days of the end of year five of the term of the lease, SDLT must be recalculated adjusting the amount of SDLT payable according to the actual rent that has been paid during the first five years. A second return must be submitted, along with any additional SDLT due.

As the additional turnover rent is unlikely to have been ascertained within 30 days of the end of year five of the term, a further amending calculation and return will be required within 30 days of the additional rent for the first five years becoming finally ascertained.

The result is a complicated set of estimated and amending calculations and three land transaction returns, for what in practice may be a small liability to SDLT!