

Introduction

Stamp duty land tax (SDLT) is payable by the 'purchaser' on land transactions. Stamp duty is a charge on:

- Documents, such as stock transfer forms, which transfer shares and marketable securities. Where, as is now usually the case, shares are transferred without a document, stamp duty reserve tax (SDRT) is payable instead of stamp duty.
- Certain land transactions completed and leases granted under a contract or agreement made before the SDLT rules took effect. Such transactions are now rare.

Whereas stamp duty is a charge on documents and deeds, SDLT is chargeable on the transfer itself.

The introduction of SDLT was intended to reduce the scope for avoiding duty and to prepare the way for e-conveyancing. SDLT is an important consideration, and significant cost, in the structuring of commercial transactions involving land. The basic structure was not as effective as HM Revenue & Customs (HMRC) hoped and, in consequence, numerous anti-avoidance provisions have been grafted on to the legislation creating enormous uncertainty.

The charge to SDLT

SDLT is charged on land transactions. A land transaction is basically any acquisition of an estate, interest, right or power over land. The introduction of wide-ranging anti-avoidance rules has created 'notional' land transactions that need to be considered.

Territorial scope

SDLT is restricted to land in the UK:

- Whether or not any party to the transaction is resident in the UK.
- Wherever the conveyance (if there is one) is executed.

UK-resident purchasers and lessees of overseas land are not liable to SDLT.

Notifiable transactions

Certain transactions are notifiable. This means that the purchaser, which for SDLT includes a lessee under a lease, must make a SDLT return and pay the correct amount of duty. There are three categories of transaction:

- Grants of leases of seven years or more, where the consideration other than rent is more than £40,000 or the annual rent is more than £1,000.
- An acquisition of a 'major interest in land'. The definition of major interest differs according to whether the land is in England and Wales, Scotland, or Northern Ireland. However, in very broad terms, it is a freehold interest.
- Other interests in land acquired for consideration attracting SDLT of 1% or more, for example, the release of a restrictive covenant.

An acquisition of a freehold interest does not have to be notified where the consideration is less than £40,000. Instead such transactions – for example, a purchase of the freehold reversion by a lessee of residential property – may be self-certified. An assignment of a short lease (less than seven years) has to be notified only if there is tax to pay or a relief to be claimed.

Schemes to avoid SDLT have to be disclosed where the market value of the property involved is £5 million or more (non-residential) or £1 million or more (residential). Since April 2010 HMRC has issued the scheme promoter with a scheme reference number to be passed on to the user.

Substantial performance

The substantial performance of a transaction can trigger liability to SDLT even where the transaction has not been completed. The person who acquires an interest in land must complete a SDLT return and pay the duty within 30 days of the 'effective date' of the transaction. The effective date is normally the date on which the transaction is completed. But in two important instances SDLT arises earlier:

- If the parties to the transaction have made a contract and the contract is substantially performed before completion. The effective date is then the date the contract is substantially performed. Substantial performance occurs in any of the following circumstances:
 - The purchaser has paid substantially all (normally taken as being at least 90%) of the purchase consideration.
 - The purchaser has taken possession of the property. For example, the purchaser is entitled to occupy it or receive rental income from it.
 - In the case of a lease, the lessee has paid any rent.
- Where a person acquires an option or right of pre-emption, the effective date is the date the option is acquired, rather than the date it is exercisable.

It is therefore not possible to avoid paying SDLT by not completing the transaction ('resting on contract'). A purchaser who has paid SDLT before completion of the contract under these rules must notify the completion as well, but will only pay SDLT at that point on any additional consideration. If a contract is rescinded or annulled, or an option is abandoned or forfeited, the purchaser can claim repayment of any SDLT paid.

Rates of SDLT

SDLT is paid at a rate determined by the amount of the consideration. The rate is charged on the whole of the consideration. This produces large jumps in tax at the thresholds between bands. For non-residential property, the rates are:

Consideration	%
Up to £150,000	0
More than £150,000 and up to £250,000	1
More than £250,000 and up to £500,000	3
More than £500,000	4

For residential property, the rates are:

Consideration	%
Up to £125,000 ¹	0
More than £125,000 ¹ and up to £250,000	1
More than £250,000 and up to £500,000	3
More than £500,000 ² and up to £1 million	4
More than £1 million ²	5

1. The 0% rate was extended to consideration of up to £250,000 for purchases by first time buyers in the period 25 March 2010 to 24 March 2012. The Government will publish the outcome of its review of this relief in autumn 2011.
2. The 5% rate applies to transactions with an effective date after 5 April 2011. There are transitional arrangements for contracts entered into before 25 March 2010 (when the 5% rate was announced) but not completed before 6 April 2011.

Consideration

Consideration includes not only cash, including any value added tax (VAT) charged, but also any money's worth that the purchaser gives for the land, such as an agreement to carry out works.

- Where any consideration is contingent, SDLT is calculated on the full amount.
- Where consideration is uncertain, SDLT is charged on a reasonable estimate.
- The surrender of a lease is not treated as consideration for the grant of another, nor is the grant of a new lease consideration for the surrender of the old one.
- In some transactions where the purchaser is a company, the consideration is the market value of the land. In particular, SDLT is charged on the market value where the company is connected with the vendor. For example, SDLT cannot be avoided on the transfer of land to a company on the incorporation of a business.
- Market value is also taken where there is an exchange involving a major interest, certain cases where debt is assumed and for special partnership transactions.

Land in disadvantaged areas

Where land is in a disadvantaged area, residential property transfers for consideration up to £150,000 are exempt from SDLT.

- The list of almost 2,000 disadvantaged areas that benefit from the higher threshold is available on the SDLT website (www.hmrc.gov.uk/sdlt/index.htm). It is based on the index of deprivation and covers the most disadvantaged 15% of wards in England and of postcode areas in Scotland. In Wales and Northern Ireland, the higher threshold applies to the most disadvantaged 42% of wards.
- Sales of freeholds, lease assignments and lease premiums are all eligible for the higher threshold.
- Relief can be claimed for the residential element of mixed-use properties, for example a shop with a flat above, where the amount paid for the residential part is £150,000 or less.
- First-time buyers do not normally need to claim disadvantaged areas relief as they already pay 0% SDLT on purchases up to £250,000. However the extension for first-time buyers does not cover mixed-use property, so disadvantaged areas relief should be claimed instead, if available.

Loose fittings

The payment for loose fittings (broadly, chattels) in a property, such as carpets and curtains, is not liable for SDLT. Identifying the value of loose fittings can make a big difference to the tax payable where the consideration is just above one of the thresholds between SDLT rates. For example, if £2,000 of a sale price of £251,000 can be attributed to furniture and carpets, the SDLT will be reduced from £7,530 (3% of £251,000) to £2,490 (1% of £249,000).

The amount attributed to loose fittings must not be more than their real value. HMRC will look closely at land transaction returns where consideration is just below £250,000, £500,000 or £1 million. Anything attached to the property, such as fitted kitchens and central heating systems, is part of the property and any consideration attributable to it is subject to SDLT.

Goodwill

When a business is transferred it is often necessary to allocate the consideration to different elements of the transaction to determine how much of the consideration is liable to SDLT and at which rate. One question that may arise is whether any part of the 'goodwill' is actually part of the property value rather than the trade. Goodwill itself is exempt from SDLT but to the extent that value is attributable to the premises it will be liable to SDLT and, where the purchaser is a company, will arguably not be eligible for corporation tax relief under the intangibles rules.

It should be noted that for the corporation tax relief the basis is the accounting treatment. For capital gains tax (CGT) and SDLT it is necessary to undertake a just and reasonable apportionment and to take heed of case law. In particular, the Special Commissioners case *Balloon Promotions v Wilson* [2006], SPC 524, provides very useful guidance.

There is ongoing discussion on this topic with the Valuation Office Agency (VOA), which is an executive agency of HMRC. While HMRC has issued guidance (www.hmrc.gov.uk/svd/practice-note.pdf) there are still significant differences in opinion within the accountancy profession on this issue.

Exemptions and reliefs

Because SDLT is chargeable on transactions rather than documents such as conveyances, reliefs are needed to avoid double charges to duty in many common circumstances. Only the main reliefs are covered in this section.

Exempt transactions

Some interests in land are exempt from SDLT. They include security interests, such as mortgages, licences to occupy land and tenancies at will (however, tenancies at will are still within the scope of the charge on leases in respect of rent). It is important to distinguish between a lease and a licence.

Certain land transactions are exempt and do not have to be notified. They are:

- Lifetime gifts.
- Certain grants of leases by registered social landlords.
- Vesting of property following the retirement or appointment of trustees.
- Transfer of land following settlement in divorce cases.
- A transfer of property out of a trust fund to a beneficiary under the terms of the trust.
- A transfer of property to a beneficiary under a will or on intestacy.

- Transfers resulting from a deed of family arrangement.
- A transfer of partnership interest where the consideration does not exceed the zero rate threshold.

Other transactions are exempt but still notifiable. They include:

- An employer or relocation company acquiring the employee's home on relocation.
- Compulsory purchase of land for development.
- Transfers on the incorporation of a limited liability partnership.
- Certain acquisitions by registered social landlords.
- Transfers of land within groups and certain group reorganisations.

Relief for sub-sales

A purchaser (B) will sometimes transfer to another person (C) all or part of the land under a contract, by means of an assignment or sub-sale. The SDLT rules call this a transfer of rights. The property is then conveyed directly from the original seller (A) to C.

There is a relief to prevent a double SDLT charge in these circumstances, although its scope is limited. In particular there is no relief if the contract has been substantially performed before the transfer of rights. Where the conditions of the relief are met, C is liable to SDLT on all the consideration payable to either A or B. B has no liability. Wide ranging anti-avoidance legislation was introduced in 2006 specifically, but not solely, to restrict further the use of sub-sales in avoidance arrangements.

Part exchanges

Parties who exchange land are normally each liable to SDLT on the full consideration for the land they acquire. There is no general relief for part exchanges. The normal rule is modified in that any money moving between the parties is ignored and SDLT is charged by reference to the market value of the property acquired.

Example 38.1 – Part exchanges

If Jeremy transfers property worth £270,000 to Lena in exchange for a property worth £240,000 plus cash of £30,000, Jeremy will pay 1% SDLT on the property worth £240,000, and Lena will pay SDLT of 3% on the property worth £270,000. This is also the case if Jeremy and Lena are connected persons (for example, brother and sister). The Finance Act 2007 exempted such exchanges from the rule that would normally link the transactions and impose a 4% SDLT rate on each (because the joint value is £510,000).

Relief is available to house builders who acquire a home as part of the consideration for the sale of a newly constructed home. Subject to some conditions, the house builder is not liable to SDLT. The purchaser of the new house has to pay SDLT on the value of the old house plus the additional consideration.

Relief is extended where the house builder uses an unconnected property trading company to acquire the individual's former home, provided the property trading company meets certain conditions.

Bulk purchases of residential property

Purchasers of residential property who acquire more than one dwelling from the same seller, in a single or linked series of transactions, can claim a relief under which the rate of SDLT is

determined by the mean consideration per dwelling instead of the aggregate consideration. The relief is available for transactions on or after Royal Assent to the Finance Bill 2011.

- The minimum rate of SDLT is 1%. The relief cannot reduce the SDLT to 0%.
- Where the bulk purchase includes non-residential property, the non-residential property is excluded from the relief. The rate of SDLT on the proportion of the consideration attributable to the non-residential property will be determined by the aggregate consideration including that attributable to the residential properties.

Example 38.2 – Bulk purchases

Anton buys five cottages from AB Properties Ltd for £1.2 million. The purchase qualifies for the relief, so the total consideration is divided by five, giving £240,000. This falls within the 1% SDLT rate band, so the SDLT due is 1% of £1.2 million = £12,000.

Without this relief the SDLT would have been 5% of £1.2 million = £60,000.

Other reliefs for property traders

No SDLT is charged on certain purchases by property trading companies. These companies normally sell the properties on and without the relief there would be two SDLT charges in quick succession. The reliefs, which are subject to several conditions, are available in the following main circumstances:

- Acquisitions by companies that specialise in buying residential properties from personal representatives of deceased individuals and selling them on.
- Acquisition of residential property by chain-breaking companies to prevent a chain of residential transactions from failing.
- Acquisition by an employer or property trader of an employee's home where the employee is being relocated.

Sale and leaseback

Businesses sometimes enter into a sale and leaseback arrangement under which they sell a property and lease it back. The motive is commonly to raise finance.

Individuals might likewise enter into a 'home reversion plan' involving a sale and leaseback in order to raise capital from their homes. Subject to certain conditions, the leaseback element of the transaction is not liable to SDLT.

Charities

Relief is available where the purchaser is a charity or charitable trust provided the property is to be used for charitable purposes or as an investment from which the profits are applied to charitable purposes, and the transaction was not entered into for tax avoidance purposes. To qualify for this and other tax reliefs, the charity must fall within the definition in Schedule 6 of the Finance Act 2010. A charity in England and Wales that is registered with the Charity Commissioners will qualify, but the relief is also available to charities in other jurisdictions that meet the conditions.

Zero-carbon homes

Purchasers of new zero-carbon homes and flats benefit from SDLT relief from 1 October 2007 to 30 September 2012. There is no SDLT liability on a qualifying home sold, on its first sale after being built, for a price of up to £500,000. Where the home is sold for more than £500,000, the SDLT is reduced by £15,000 (3% of £500,000). The balance of the SDLT, calculated at 4% for

consideration over £500,000 and up to £1 million and 5% for consideration over £1 million, is payable in the normal way.

To qualify for relief, the home must have aggregate zero carbon emissions from all energy use over a year. There are detailed criteria and a certification process.

Alternative finance arrangements

Reliefs exist to allow individuals, companies, trusts and unincorporated associations to purchase land and buildings using alternative financing arrangements that are structured to preclude the payment of interest. The reliefs ensure that the SDLT due is no more than would be due under more traditional loan finance arrangements.

Without these reliefs alternative financing arrangements might result in additional SDLT, for example, if the purchase involves, as it usually would, two or more transactions.

Leases

SDLT may be charged on lease premiums, lease rents and consideration for the assignment of a lease.

Lease premiums

Any premium under a lease is chargeable at the full SDLT rates (up to 4%) as on property purchases.

- This means that in most cases no duty is charged where the premium is £125,000 or less for residential property (£250,000 or less from 25 March 2010 to 24 March 2012 for first time buyers, subject to some conditions) or £150,000 or less for non-residential property.
- However, where the property is non-residential and the rent is more than £1,000 a year, the premium cannot be charged at 0% – the lowest rate is 1%.

A reverse premium on the grant or surrender of a lease is not treated as consideration.

- A reverse premium on a grant is where the landlord pays the tenant.
- A reverse premium on a surrender is where the tenant pays the landlord.

Assignment of a lease

Where a lessee assigns a lease to a new lessee for consideration, the new lessee is liable to SDLT on the consideration in the same way as on a purchase of property. If the lease, on grant, was eligible for a relief (such as charity relief or group relief) then the assignment is treated as a grant of a lease for the remaining period of the lease. A reverse premium (where the outgoing lessee pays the incoming lessee) is not liable for SDLT.

Lease rents

SDLT is payable on the 'net present value' of the rent payable over the term of the lease.

- There is a single rate of 1% for residential and non-residential property leases.
- No duty is charged where the net present value is not more than a threshold of £125,000 for residential property or £150,000 for non-residential or mixed use property. When SDLT was introduced in 2003, the government said that these thresholds meant 60% of commercial leases and 93% of residential leases (then with a £60,000 threshold) would not give rise to SDLT on rent.

- Where the net present value exceeds the threshold, SDLT is charged only on the excess. On new leasehold properties, the charge is 1% of the excess over £125,000 when the £125,000 is exceeded.
- The net present value is the rent payable over the whole term of the lease discounted at a rate of 3.5% a year.
- All rent changes after five years are ignored in calculating the net present value. However, abnormal rent increases after five years are treated as a new lease. There is a formula for determining whether a rent increase is abnormal.
- The full amount of rent is used in the calculation even if it includes other items such as service charges, unless these are separately identified.
- There is a series of calculators at www.hmrc.gov.uk/sdlt/calculate/calculators.htm.

There are some special rules for particular circumstances:

- Sometimes the rent under a lease is uncertain. For example, it might be related to business turnover. In such cases, the lessee must initially calculate net present value using a reasonable estimate of the rent. If the rent is determined during the first five years, the lessee must make a further SDLT return. If this does not occur, the lessee must make an additional return at the five-year point based on the actual rent paid in the first five years.
- All variations that extend a lease or increase the rent are treated as the grant of a new lease. All other variations are disregarded. Rent increases resulting from a provision in the lease are not normally treated as a new lease.
- If a lease is granted for an indefinite term, SDLT is calculated as if the lease were for 12 months. If it continues after this period, the continuation is deemed to be the grant of another lease for 12 months, and so on for each further continuation. Each continuation is treated as linked with all the earlier deemed grants, and SDLT will start being payable once the total rent exceeds the £125,000 or £150,000 threshold.
- Where a lease is surrendered and a new lease granted, credit is given in computing the SDLT due on the new lease for the amount of rent that was due for the surrendered years.

There are a number of anti-avoidance provisions to prevent manipulation of the rules.

Example 38.3 – Stamp duty

A 20-year lease of commercial property has an annual rent of £20,000.

The net present value is £284,247

$$\left(\frac{20,000}{1.035} + \frac{20,000}{1.035^2} + \frac{20,000}{1.035^3} \dots \frac{20,000}{1.035^{20}} \right)$$

The first £150,000 is exempt and the excess is charged at 1%.

The SDLT payable by the lessee is therefore $(£284,247 - £150,000) \times 0.01 = £1,342$.

Agreements for lease

An 'agreement for lease' ('missive of let' in Scotland) is liable to SDLT in a similar way to a lease if it is substantially performed (i.e. treated as a lease) without being completed. Where a lease is subsequently granted in pursuance of the agreement for lease, SDLT is charged as if a lease was surrendered and a new lease granted.

Partnerships

There are special rules for transactions between a partnership and a partner, including an incoming or departing partner, and for changes in partnership interests, where a partnership owns land.

- Where land is transferred into a partnership in exchange for an interest in the partnership, SDLT is charged on the proportion of land transferred to other partners who are not connected individuals.
- Where partnership property includes an interest in land and either:
 - An existing partner transfers all or part of their partnership interest to a person who is or becomes a partner for money or money's worth; or
 - A person becomes a partner and an existing partner reduces their partnership share (or ceases to be a partner) and withdraws money or money's worth from the partnership;

SDLT is charged on the person acquiring the interest or increased interest, on a proportion of the market value of the land interest so transferred. The proportion will be equal to the increased (or new) partnership share held by the acquiring partner.

- Where a partnership transfers an interest in land to a partner or former partner, SDLT is charged on the person acquiring the interest, on the proportion of the market value of the land interest transferred on which tax (or stamp duty) has not previously been paid.

The wide ranging anti-avoidance rules introduced in 2006 were amended from 25 March 2010 to enable the partnership rules to be replaced by the notional transactions rules where they are part of a tax avoidance scheme or arrangement.

Stamp duty and SDRT

The scope of stamp duty is now limited to transactions in shares and securities. Transfers of goodwill, debts and other property are now exempt from stamp duty. Stamp duty is a charge on documents or instruments rather than the transactions themselves. Although there is no territorial limit to stamp duty, in practice instruments are chargeable if they are executed in the UK.

A sale of stock or marketable securities in the electronic share transfer system CREST is liable to SDRT at 0.5% of the consideration. Paper transactions are subject to 0.5% stamp duty. It was originally proposed that stamp duty on share sales would be abolished with the advent of paperless trading, such as share sales in CREST, but, perhaps because of the high revenue yield from stamp duty, the government overcame the problem of the lack of documents in CREST by extending SDRT instead. The majority of dealings in listed shares in the UK are now subject to SDRT rather than stamp duty and are accounted for by the financial intermediary. Listed share dealings outside CREST and transfers of shares in an unlisted company are subject to stamp duty.

Stamp duty 'franks' any SDRT due on that transaction, so no double charge should arise. Care is needed to ensure that any reliefs are claimed (for example, for intra-group transfers).

Where a company buys its own shares, this is treated as a share sale liable to stamp duty. Some other securities transactions are subject to SDRT. Bearer instruments are liable to stamp duty or SDRT at 1.5%, as are certain transfers into a clearance system.

Reliefs and exemptions

Certain instruments are not liable to stamp duty. They include:

- A transfer by way of a gift during a person's lifetime.
- Vesting of shares following the retirement or appointment of trustees.
- A transfer of shares following settlement in divorce cases.
- A gift on the transfer of land to a residuary legatee under a will.
- A transfer of property out of a trust fund to a beneficiary under the terms of the trust.
- The transfer of shares to a beneficiary under a will.
- Transfers under a deed of family arrangement.
- Transfers of shares within a group of companies and in certain company reorganisations.
- Sales where the consideration does not exceed £1,000.

Company sales

There can be a big difference in tax between selling company shares and a sale of a business by a company.

- On a sale of shares, stamp duty at 0.5% is payable on the whole consideration. This is so regardless of the nature of the underlying assets.
- On a sale of a business, SDLT is charged only on any land included among the business assets.
- However, SDLT is payable on the consideration for the land (and it will include any debt taken on) while stamp duty is payable on the net value of the company.

Example 38.4 – Company sales

A purchaser offers the owner of a company £350,000 for the shares or £400,000 for the business assets and goodwill. The assets include land used for the trade valued at £230,000.

- On a purchase of the shares, stamp duty would amount to £1,750 (£350,000 at 0.5%).
- If the purchaser buys the business assets from the company, the only charge would be SDLT of £2,300 on the land (1% of £230,000).
- If the business assets included land worth £300,000, the SDLT charge would be £9,000 (£300,000 at 3%) compared to £1,750 for a sale of shares.
- If the business assets included land worth no more than £150,000, there would be no SDLT liability as the value of the land is below the threshold for non-residential property.
- If the business assets and goodwill were net of debt of £500,000 and the land were worth £730,000, stamp duty would still be £1,750 whereas SDLT would be £29,200 (4% of £730,000).

The sale of shares gives rise to different capital gains consequences for the seller compared to a sale of business assets by a company. The seller's and purchaser's interests may conflict.

There is anti-avoidance legislation to prevent the artificial avoidance of SDLT in some circumstances by selling property within a company.

Payment of stamp duty

The purchaser of shares is responsible for paying stamp duty. Share transfer documents must be sent to the Stamp Office for stamping. Stamps are impressed on the document to show the duty paid.

- A document must be stamped within 30 days of execution.
- Penalties and interest may be charged where a document is presented for stamping late. Any penalty and interest charges are stamped on the document.
- All conveyances and transfers on sale must be presented to the Stamp Office, whether or not they are subject to duty.
- A company cannot register a share transfer unless the relevant document has been stamped or completed to show no stamp duty is payable.
- No stamp duty is payable where the consideration for the share transfer is £1,000 or less.

Stamping of a document by the Stamp Office does not necessarily signify that it has agreed with the duty charged. An instrument must be 'adjudicated' to obtain formal agreement.

- Adjudication is the process whereby the Stamp Office formally assesses the amount of duty, if any, chargeable on an instrument.
- Instruments that have been adjudicated are marked with a special stamp.

If the payer disputes the duty assessed by the Stamp Office, he or she may appeal within 30 days from the date of the date of notice of the Commissioners' decision being given and after paying the duty assessed plus any penalty and interest. The appeal is to the First-tier Tribunal (Tax).

Interaction with other taxes

Deduction of SDLT for tax purposes

SDLT is treated as part of the cost of acquisition of property.

- Where a property is a fixed asset of a business, the SDLT on purchase is not deductible in computing trading profits, but is included in the acquisition cost for CGT purposes.
- If the trade consists of buying and selling property, SDLT is allowed as a trading expense.

VAT

If VAT is charged on a sale, SDLT is payable on the purchase price plus any applicable VAT.

- If an option to charge VAT has been exercised in respect of the land, stamp duty is charged on the sale price including VAT.
- This is the case even though the purchaser might be able to recover the VAT in the next VAT return.
- Similarly, where VAT is charged on rents, the VAT is included in the calculation of net present value on which SDLT is charged.

Self-assessment

SDLT is charged under self-assessment in a similar way to income tax and corporation tax. In practice the solicitor acting in a purchase will normally make the return, but the purchaser is ultimately responsible for its accuracy and timely submission and for continuing obligations such as retaining records and any amendments or further returns that may be required.

Returns

The purchaser in a land transaction must complete a land transaction return, which will include a self-assessment of the SDLT due.

- The return is due within 30 days of the effective date.
- The purchaser must pay the duty by the same date.
- The purchaser or his or her agent must sign the return.
- Purchasers who are individuals must give their national insurance number if they have one.

When HMRC has processed the return, it issues a land transaction return certificate. The certificate must be presented to register title to the land. The purchaser may also have to make a return where the amount of SDLT changes because a contingency ceases, uncertain consideration is ascertained or a relief is withdrawn. SDLT may be payable in instalments where the consideration is contingent or uncertain at the date of the transaction, and all or part of it may be payable more than 18 months after the transaction.

Retention of records

A purchaser who has to deliver a land transaction return must keep all necessary records for six years after the transaction date. Such records would include the sale contract or lease, any professional valuations and any relevant plans and maps.

Enquiries

HMRC may:

- Enquire into any land transaction return.
- Correct or amend a return.
- Request documents.
- Impose penalties for late or incorrect returns.
- Determine the tax payable where a purchaser has failed to make a return.

The purchaser can appeal against an HMRC assessment or amendment of a self-assessment, or against the conclusion of an enquiry. The appeal is to the First-tier Tribunal (Tax). Appeals may be settled by agreement between the purchaser and HMRC.

Interest and penalties

Interest is payable on the amount of any unpaid tax from 30 days after the transaction. Interest is also payable on penalties paid late. HMRC will pay interest on any overpaid SDLT. Penalties are charged for late returns, incorrect returns, failure to keep records and in some other circumstances.

The following penalties may be charged:

- A flat-rate £100 where a return is delivered up to three months late, increasing to £200 for later returns.
- Up to 100% of the outstanding tax where a return is more than 12 months late.
- A daily penalty of up to £60 may be imposed by the tax tribunal where HMRC has issued a formal notice to deliver a return and the purchaser has failed to comply.
- Up to 100% of the omitted tax where a return is incorrect and the purchaser fails to correct it within a reasonable time.
- Up to £3,000 for failing to keep records.
- An initial amount of up to £300 for failure to produce a document that HMRC has requested by means of a formal notice, followed by up to £60 a day for each day the failure continues.
- Up to £3,000 for knowingly assisting in the delivery of an incorrect return, document or information.
- For carelessness (a failure to take reasonable care) the penalty is 30% of the underpaid SDLT.
- For a deliberate act that is not concealed, the penalty is 70% of the underpayment.
- For a deliberate and concealed act, the penalty is 100% of the underpayment.

These penalties may be reduced where the taxpayer makes a disclosure to HMRC and for cooperating in an HMRC enquiry.

The offence of fraudulent evasion of SDLT carries a prison sentence of up to six months on conviction in a magistrates' court and up to seven years otherwise. A fine may be imposed as well as, or instead of, imprisonment.

Tax avoidance schemes

Any UK-based person who devises, markets or promotes certain schemes or arrangements to avoid SDLT must disclose details to HMRC.

- Disclosure is necessary if the arrangement involves non-residential property with a market value of at least £5 million or a residential property of at least £1 million.
- The requirement applies to commercial property arrangements made available or implemented after 30 June 2005 and residential property, subject to some exclusions, for arrangements after 31 March 2010.
- The user of a tax avoidance scheme must disclose it to HMRC if the promoter is offshore, or the user devised the scheme in-house, or the promoter is a lawyer who cannot make a full disclosure without revealing legally privileged material. In the last case, the client can choose to waive the right to privilege and allow the lawyer to make the disclosure.
- HMRC will issue the scheme promoter with a scheme reference number and the user of the scheme must declare it whenever that scheme is used.

Tax planning key points

- Under SDLT, the onus lies clearly on the purchaser to pay the correct tax on time and comply with all the rules. SDLT can be a significant cost in land transactions and many of the methods that were previously used to avoid stamp duty on transfers of land are not possible under SDLT.
- There are a number of reliefs and exemptions. However, the reliefs may not be available where there is a scheme or arrangement under which the SDLT would be less than it would be on a notional transaction.
- There are a number of specific anti-avoidance rules (linked transactions, notional transactions etc) as well as the specific conditions for the various reliefs to be available to be considered.
- The National Audit Office has criticised Stamp Taxes for its failure to deal with cases of avoidance and it is to be expected that there will be a significant increase in interest in any arrangements.

This guide is for general information only and is not intended to be advice to any specific person. You are recommended to seek competent professional advice before taking or refraining from taking action on the basis of the contents of this publication. The guide represents our understanding of the law and HM Revenue & Customs practice as at September 2011, which are subject to change.