

CHAPTER 2

STAMP DUTY LAND TAX

2.1 Introduction

Stamp Duty Land Tax (SDLT) is generally payable on the **purchase or transfer of property or land in the UK** where the amount paid is above a certain threshold. In addition most UK land and property transactions must be notified to HM Revenue & Customs (HMRC) on a **Stamp Duty Land Tax return** - even if no tax is due.

Stamp duty land tax (SDLT) is charged on land transactions. A land transaction includes the **acquisition of an estate interest, right or power in or over land in the UK**. The most obvious examples are the **sale of freehold land and the assignment or grant of a lease**.

FA 2003, s. 42

FA 2003,
ss.43, 48

A person who **acquires such an interest in land** is called (in the legislation) the **"purchaser"** and a person who **disposes of the interest** is called the **"vendor"**. These expressions apply even if there is no consideration for the transaction. **The purchaser is liable to make a land transaction return to HMRC and pay the tax.**

FA 2003,
s.43((4)

FA 2003,
ss.76, 85

Normally, the purchase of land is a **two stage process**. First, the **parties enter into a contract**. Usually, the purchase is then concluded by **completion, when title to the land passes to the purchaser** and he enters into occupation of the land.

A person is not regarded as entering into a land transaction simply by entering into a contract. If the transaction proceeds to completion, the **contract and completion are treated as a single land transaction**. In this case, the **effective date of the transaction is treated as the date of completion**. You will see later that the effective date is important for the administration of SDLT.

FA 2003, s.44

If the contract is **"substantially performed"** without having been completed (for example if the purchaser is allowed to occupy the property), **the contract is then treated as being the land transaction**. In this case, the **effective date of the transaction is treated as the date of substantial performance**.

2.2 SDLT Rates and thresholds

The tax rate and payment threshold can vary according to whether the property is in **residential or non-residential** use, and whether it is a **freehold or leasehold** property.

Where a **lease** is granted there are **two** potential elements which are chargeable to SDLT - the **premium payable** and the **rent payable** during the term of the lease. Leases are discussed below.

2.3 SDLT rates for residential property

The table below applies for all **freehold residential purchases and transfers**, and to the **premium paid for a new lease or the assignment of an existing lease**. (If the property will be used for both residential and non-residential purposes the rates differ - please see the section 'SDLT for non-residential or mixed use property'.)

The **£125,000 threshold** shown in the table was increased to £175,000 between **3 September 2008 and 31 December 2009** inclusive.

This increased threshold meant that Disadvantaged Areas Relief, previously available for properties in areas designated as 'disadvantaged', did not apply during this period. Read more about this relief below.

Residential land or property - SDLT rates and thresholds

Purchase price/lease premium or transfer value	SDLT rate
Up to £125,000 (see note above)	Zero
Over £125,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000	4%
Over £1m (from 6 April 2011)	5%

If the value is above the payment threshold, SDLT is charged at the appropriate rate on the **whole** of the amount paid. For example, a house bought for £180,000 is charged at 1 per cent, so £1,800 must be paid in SDLT. A house bought for £350,000 is charged at 3 per cent, so SDLT of £10,500 is payable.

Illustration 1

Mr A has two houses to sell in December 2010. He is selling Redroof to Miss B for £100,000 and Greenacres to Mr C for £275,000.

From the table, you will see that Miss B's purchase falls within the **zero rate band** and so there is **no SDLT payable on her purchase**.

This does not mean that the transaction is exempt from SDLT. Miss B will still have to make a land transaction return to HMRC and HMRC may make enquiries about the return. For example, it may require further evidence about the transaction to make sure that the zero rate is applicable.

Mr C's purchase falls within the **3% band** and so he is liable to pay SDLT of **£275,000 @ 3% = £8,250**. You will notice that SDLT works on a different basis from other taxes. Once the transaction falls within a particular rate band, the **whole** of the consideration is chargeable at the relevant rate - SDLT is not a cumulative tax like income tax.

2.4 Stamp Duty Land Tax: First-Time Buyers

For a limited period of two years, Finance Act 2010 introduced relief from stamp duty land tax on purchases of residential property up to £250,000 where the purchaser (or all the purchasers) are first-time buyers and intend to occupy the property as their only or main home. This relief will be available for residential purchases where the effective date (normally the date of completion) is on or after 25 March 2010 and before 25 March 2012.

2.5 SDLT rates for non-residential or mixed use properties

There are **different thresholds for residential and non-residential property**. Residential property is defined in S116 FA 2003 and non-residential property is any property that is not residential property. Mixed use property is treated in the same way as non-residential property. In most cases, it will be clear which category the land falls within (for example, a factory is clearly non-residential) but if you are in any doubt, look at the legislation.

Non-residential property includes:

- commercial property such as shops or offices
- agricultural land
- forests
- any other land or property which is not used as a dwelling
- six or more residential properties bought in a single transaction

A mixed use property is one that incorporates both residential and non-residential elements.

The table below applies for freehold and leasehold non-residential and mixed use purchases and transfers.

If the transaction involves the purchase of a **new lease with a substantial annual rent, there may be additional SDLT charge** to that shown below, based on the rent. See the later section and table for more detail.

Non-residential land or property rates and thresholds

Purchase price/lease premium or transfer value (non-residential or mixed use)	SDLT rate
Up to £150,000 - annual rent is under £1,000	Zero
Up to £150,000 - annual rent is £1,000 or more	1%
Over £150,000 to £250,000	1%
Over £250,000 to £500,000	3%
Over £500,000	4%

Annual rent is determined by the average ascertainable rent each year. Rent is ascertainable if you know you are going to have to pay at least this amount for the year. For example:

- i) if the rent you have to pay depends entirely on the turnover of your business, then there is no ascertainable rent as there is no amount you know you will have to pay;
- ii) if the rent you have to pay depends on the turnover of your business and you have a minimum amount you have to pay, the minimum rent due is the ascertainable rent;
- iii) if the rent you have to pay is a fixed amount plus an amount based on percentage of turnover, the ascertainable rent is the fixed amount you have to pay, excluding any percentage amount;
- iv) if your rent is fixed, or any increases in the rent are known from the outset, the ascertainable rent is the amount known from the outset.

Average annual rent is calculated by adding all the ascertainable rent together and dividing it by the term of the lease.

2.6 Disadvantaged areas relief

FA 2003,
s.57, Sch 6

For transactions in residential property situated in a disadvantaged area on or after 1 January 2010 the **threshold for SDLT is £150,000 rather than £125,000**. The Treasury has the power to specify which areas are disadvantaged but in the exam you would be told if the area was disadvantaged.

This also applies to the residential element of mixed use properties which are situated in a disadvantaged area.

2.7 Exemptions

FA 2003,
s.49, Sch 3

A land transaction is a chargeable transaction for SDLT, unless it falls within an exemption. The most important exemptions are in Schedule 3 and include:

- (a) transactions where there is **no chargeable consideration** for the disposal (ie gifts);
- (b) transactions in connection with **divorce**;
- (c) variations of wills etc. after death.

No land transaction return is required if one of the exemptions in Schedule 3 applies.

Schedule 8 also provides useful relief for charities.

2.8 Chargeable consideration

FA 2003, s.50
Sch 4

The chargeable consideration for a transaction is usually the **consideration given for the land transaction in money or money's worth**, directly or indirectly by the purchaser or a person connected with him. Schedule 4 also gives details of other types of chargeable consideration such as the assumption of an existing debt (e.g. a mortgage) by the purchaser, carrying out of works on the land and provision of services. It also provides that the chargeable consideration is taken to **include any VAT chargeable on the transaction**, except if the vendor has the option to charge VAT, but has not elected to do so by the date of the transaction.

If the receipt of the consideration is postponed (for example, payment by instalments), **no discount** is given for that postponement.

2.9 Exchanges

FA 2003,
s.47, Sch 4
para 5

The general rule is that if **two pieces of land are exchanged, there will be two separate SDLT transactions.**

The chargeable consideration for each transaction is the **market value of the land acquired by each purchaser** and SDLT will be payable accordingly.

There are special reliefs for certain exchanges of residential property. These include the situation where a **house-building company acquires a dwelling in part exchange for the disposal of a newly constructed dwelling.** The old dwelling must have been the only or main residence of the individual disposing of it and he must intend to occupy the new dwelling as his only or main residence. The effect of the relief will usually be that no SDLT is payable on the old dwelling.

FA 2003, Sch
6A

2.10 Contingent, uncertain or unascertained consideration

FA 2003, s.51

Contingent consideration is consideration which is payable (or not payable as the case may be) if some uncertain future event occurs. A common example is that part of the consideration for the purchase of land is dependant on planning permission being granted.

Illustration 2

Michael owns 2 acres of land. A developer, Mr Darwin, agrees to buy the land for £200,000 plus contingent consideration of £100,000 if planning permission to build 4 houses is granted within a certain time. The land is not in a disadvantaged area.

For SDLT purposes, **it is assumed that the contingency will be satisfied** and so the chargeable consideration will be £300,000. Mr Darwin will be required to pay SDLT on this amount in the normal way ie £300,000 @ 3% = £9,000.

However, Mr Darwin can apply to **defer payment of the tax** if the contingent consideration falls to be paid on one or more future dates, at least one of which is **more than six months after the effective date of the transaction.**

FA 2003, s.90

If it becomes clear that the contingency will not occur, **the legislation provides that transaction can be reconsidered.** For example, if planning permission is not granted in the above illustration and Mr Darwin has not applied to defer the tax, he can make a claim for **repayment of the overpaid tax plus interest from the date of payment.**

FA 2003, s.80

In this case, the revised SDLT will be £200,000 @ 1% - £2,000, so Mr Darwin would be entitled to repayment of £(9,000 - 2,000) = £7,000 of SDLT plus interest.

Uncertain consideration means that **its amount or value depends on uncertain future events**. For example, in the illustration of Michael and Mr Darwin above, the conditional consideration on the granting of planning permission could have been a % of the sale price of the houses. In this case, SDLT is payable on the basis of a **reasonable estimate of the value of the uncertain consideration** (a similar principle applies for CGT following the case of *Marren v Ingles*). Again, an application for postponement of tax under s.90 is possible and s.80 provides for the SDLT to be reconsidered once the consideration becomes certain.

Unascertainable consideration is **consideration which cannot be valued at the date of the transaction but is certain to be received**. It is treated in the same way as uncertain consideration.

2.11 Partnership transactions

FA 2003, Sch
15, Part 3

Stamp duty land tax applies to the following:

- (a) **transfer of an interest in land to a partnership** (for example, in return for an interest in the partnership);
- (b) **transfer of an interest in a partnership where the interest includes land**; and
- (c) **transfer of an interest in land from a partnership to one of the former partners**.

The charge will be based on the percentage change in ownership, for example a partner with a 20% partnership share owns some land personally. The land is then sold to the partnership for £300,000. There will be a purchase by the partnership of 80% of the land (being 100% less the partner's 20% share) and therefore stamp duty land tax will be charged on £240,000 (80% of £300,000).

2.12 Transfer to connected company

FA 2003, s.53

A special rule applies where the **purchaser is a company** and either:

- (a) the vendor is **connected** with the company; or
- (b) some or all of the consideration for the transaction is **the issue or transfer of shares in a company with which the vendor is connected**.

An example would be where land is transferred from a sole trader or partnership to a company on **incorporation**.

In this case, **the chargeable consideration is the market value of the land at the date of the transaction**.

This rule applies even if the land is gifted to the company, as the exemption in Sch 3 para 1 is disapplied in this case.

Where land is transferred by a partnership to a company on incorporation the special partnership rules apply.

2.13 Transfer to a limited liability partnership

FA 2003, s.65

There is an **exemption from stamp duty land tax where land is transferred to a limited liability partnership (LLP) in connection with its incorporation.**

Three conditions must be satisfied:

- (a) **the effective date of the transaction is not more than one year after the incorporation of the LLP;**
- (b) **the partners in the old partnership and the new LLP are the same and the transferor is one of those partners;**
- (c) **the interests of the partners in the old and new partnerships are the same or any change in the interests is not part of a tax avoidance scheme.**

2.14 Leases

FA 2003,
ss.55, 56,
Sch 5

Where a **lease is granted**, there are **two potential elements** which are chargeable to SDLT.

Firstly, the lease premium. This is charged as if it were consideration for a purchase and you use the tables we looked at earlier for residential or non-residential properties.

Secondly, there could be a charge in respect of the rent payable and we consider this below.

2.15 SDLT on rent - new residential leasehold purchase

When a new residential lease has a **substantial annual rent**, SDLT is payable on **both** of the following, which are calculated separately and then added together:

- **the lease premium** (purchase price) - see the table above
- **the 'net present value'** (NPV) of the rent payable

The **NPV** is based on the value of the **total rent over the life of the lease** and can be worked out using HMRC's online calculator.

In practice SDLT only becomes payable on a fairly high rent - starting at around £4,500 a year for a 99-year lease, for example, however the exact threshold depends on the length of the lease.

SDLT on rent for new leasehold properties (residential)

Net present value of rent - residential	SDLT rate
£0 - £125,000	Zero
Over £125,000	1% of the value that exceeds £125,000

For example, if the NPV of the rent on a new residential lease granted in July 2010 totals £200,000, then the SDLT on this rent is 1% of £75,000, or £750. This charge is then added to the SDLT charged on the premium paid for the new lease, shown in the earlier table.

The NPV of the rental stream over the term of the lease depends on the term of the lease and the amount of rent payable in the first five years.

The Revenue has provided lease factor tables in their Stamp Duty Information Bulletin 6 to assist practitioners with the NPV calculation. If you needed these they would be given in the examination.

If the rent remains fixed for the first five years the calculation is relatively straightforward. Advisors simply use the cumulative factor quoted for the term of the lease and apply it to the annual rent.

Illustration

A trader takes on a new lease for 40 years, paying £10,000 a year rent for the first five years, with rent reviews at the start of year 6 and 5 yearly thereafter. The cumulative factor for a 40 year lease is 21.35507234.

The NPV is calculated as $21.35507234 \times £10,000 = £213,551$, and stamp duty land tax is payable at 1% on £88,551 ($213,551 - 125,000$), ie £886.

Note that rent reviews and break clauses are generally ignored after the first five years.

If the annual rent varies in the first five years the method of calculating the NPV is amended.

The advisor would need to determine the amount of rent payable for each of the first five years of the lease. If this cannot be determined a reasonable estimate would suffice.

Rent after year five is deemed to be equal to the highest 12 month rental period during those first five years. This is normally referred to as the "year six" rent.

We then apply the individual lease factors to each of the first five years to ascertain the NPV of those years. We would apply the year one factor to year one rental, the year two factor to year two rental and so on.

The factor to apply to the year six rental amount depends on the term of the lease. If you have a ten year lease, apply the individual factor for year ten to the "year six" rent.

To determine the NPV of total rentals we then just add together the figures obtained for years one to five (five figures) and the figure obtained for year six onwards. This will be a maximum of six figures to add together. This total is the NPV of the rent on which SDLT is charged, subject to the 0% threshold.

2.16 SDLT on rent - new non-residential or mixed use leasehold purchase

When a new non-residential or mixed use lease has a **substantial annual rent**, **SDLT is payable on both** of the following which are calculated separately and then added together:

- the **lease premium** or purchase price - see the table above
- the net present value of the rent payable (this is based on the value of the total rent over the life of the lease and can be worked out using HMRC's online calculators)

SDLT on rent for new leasehold properties (non-residential or mixed use)

Net present value of rent - non-residential	SDLT rate
£0 - £150,000	Zero
Over £150,000	1% of the value that exceeds £150,000

Illustration 3

Simon is granted a 21 year lease over a factory for a premium of £325,000 and an annual rent of £10,000. The net present value of rent is £180,000. The SDLT payable is:

Premium

$$3\% \times \text{£}325,000 = \underline{\text{£}9,750}$$

Rental

$$1\% \times \text{£}(180,000 - 150,000) = \underline{\text{£}300}$$

There are further detailed rules in Schedule 5 which include what is treated as rent, the effect of provision for rent review and the determination of the term of a lease.

2.17 Groups

FA 2003, s.62
Sch 7 Part 1

There is an exemption from SDLT where **land passes between two companies in a group** (similar to that for stamp duty). **No tax is payable on such a transfer between companies where one company owns 75% of the shares of the other, or both are under the 75% ownership of another company.**

The exemption does not apply if there are arrangements in existence such that a person has or could obtain control of the purchaser company but not the vendor company.

Group relief may be withdrawn if the purchaser company ceases to be a group member within 3 years, in certain circumstances. The tax that would originally have been paid becomes chargeable. It becomes payable 30 days after the event which causes the withdrawal of the group relief.

Group relief is not withdrawn where the purchaser ceases to be a member of the same group as the vendor because the vendor leaves the group. However, if there is a change of control of the purchaser within three years of the vendor leaving the transaction the purchaser is then treated as leaving the group and the tax that would have originally been paid becomes chargeable.

SDLT group relief must be **claimed in a land transaction return** and a further return made if the relief is withdrawn.

2.18 Reorganisations

Reconstruction relief

There is **relief from stamp duty land tax** in respect of certain company reorganisations, for example on a **demerger**.

FA 2003, Sch 7
Para 7

The relief applies where the **undertaking of the target company is transferred** in whole or in part to the acquiring company. The acquisition must be part of a **scheme for the reconstruction of the target company** so that the target company and the acquiring company have **substantially the same membership**. The acquiring company must then carry on **substantially the same business** as the target company did previously.

If the relief applies, **SDLT will not be payable** on the transfer of the assets of the target company to the acquiring company. However, a claim for the relief must be made in a **land transaction return**.

There are a number of conditions which apply:

- (a) the consideration must include the **issue of non redeemable shares** in the acquiring company to **all the members of the target company**;
- (b) there must be **no other consideration**, other than the **assumption or discharge of any liabilities** of the target company;
- (c) the scheme must be undertaken for **bona fide commercial reasons** and must not form part of a scheme or arrangement the main purpose of which is the **avoidance of liability to certain taxes**.
- (d) following the acquisition, **each shareholder of the target company must be a shareholder of the acquiring company**. He must also hold the **same, or as nearly as maybe the same, proportion of shares** in the acquiring company as he did in the target company.

For these purposes if the target company or the acquiring company holds any of its own shares, these are disregarded.

Acquisition relief

There is **partial relief** from SDLT where a **company acquires the whole or part of an undertaking of another company**. However, here the acquisition of the undertaking **does not need to be part of a scheme of reconstruction** of the target company. The relief can also be used for **internal reorganisations**.

FA 2003, Sch 7
Para 7

In this case the **maximum SDLT will be 0.5%** provided the conditions are met.

The conditions are:

- (a) the consideration must include the **issue of non redeemable shares** in the acquiring company **to the target company** or to **any or all of the members** of the target company;
- (b) there must be **no other consideration**, other than the **assumption or discharge of any liabilities** of the target company, and **cash not exceeding 10% of the nominal value of the shares**;
- (c) the **acquiring company must not be associated with another company** that is party to arrangements with the target company.
- (d) the scheme must be undertaken for **bona fide commercial reasons** and must not form part of a scheme or arrangement the main purpose of which is the **avoidance of liability to certain taxes**.

"Arrangements" are those relating to the **shares of the acquiring company issued in relation with the transfer of the undertaking**. This is an anti avoidance provision to **prevent the acquiring company having arrangements in force for the undertaking to pass to a third party**.

There is no requirement for the interests of the members of each company to be the same.

The relief can be withdrawn if **within three years of the effective date of the transaction, the control of the acquiring company changes**. The SDLT that would have been payable had the relief not been claimed, is due **within 30 days** of the change of control of the acquiring company. The rule only applies if the **acquiring company still owns the land** at the date of the change of control.

Example 1

Georgia gives a house to her husband worth £200,000. The house is not in a disadvantaged area.

For stamp duty land tax this transaction is:

- a) Exempt because this is an inter spouse transfer
- b) Exempt because this is a gift
- c) Charged at 0% up to £125,000, then 1% on the remaining £75,000
- d) Charged at 1% on £200,000

Example 2

Simon is granted a 40 year lease on a shop on 1 January 2010. The premium is £45,000 and the net present value of the rent is £180,000. Annual rents under the lease are £4,500

What is the SDLT payable on the grant of the lease by Simon?

Example 3

Which of the following is NOT a condition for acquisition relief?

- a) the consideration must include the issue of non-redeemable shares;
- b) cash consideration must not exceed 10% of the nominal value of the shares;
- c) the interest of the members of each company must be the same;
- d) there must be no arrangement relating to the shares issued by the acquiring company.

Answer 1

The answer is **B**, as the transaction is exempt under Sch 3 FA 2003.

There are no special rules about transfers between spouses for SDLT.

If you thought that SDLT was calculated in the way set out in answer C, you need to look again at the method of calculating the tax.

Answer 2

The duty on the lease is:

	£	£
Duty on premium: £45,000 × 1% (note)	450	
Duty on rent: £(180,000 – 150,000) × 1%	<u>300</u>	
Total duty		<u>750</u>

Note

The zero rate charge does not apply because the lease is non residential and the annual rental exceeds £1,000.

Answer 3

The answer is **C**

The members interest condition only relates to reconstruction relief.