



St James' SQUARE

LAW FIRM

Our Guide to Stamp Duty Land Tax ("SDLT")

Part One - Overview

Introduction

Stamp Duty Land Tax is a tax payable by anyone purchasing or taking a lease of property, whether residential or commercial, if the value of the transaction is above a certain minimum value. (This memo refers to the purchaser or lessee of property as the “buyer” but our comments apply equally to both freehold purchases and the taking of a lease of property).

In recent years there have been amendments to SDLT which have increased its complexity. As property values generally increase, so the financial stakes are raised and the cost of a mistake with SDLT can be very significant indeed. It is no longer a simple tax and we are not qualified to advise on the full range of reliefs, anti-avoidance measures and other complexities.

As a result, we have decided to issue a copy of this memo to all clients who are buying property.

The return

The law requires that an SDLT return must be submitted to HM Revenue and Customs (HMRC) with any tax due within 30 days of the “effective date” of the transaction. This is usually, but not always, the date of legal completion. Sometimes it can be sooner. If the return is submitted late there are penalties starting at £100.

Most transactions, whether freehold purchases or leases, have to be registered at the Land Registry. We will complete the SDLT return for you because we have to prove to the Land Registry that the return has been made before we can submit your transaction for registration. In light of the strict time limits for registration, it is important that the SDLT return is dealt with immediately after your transaction is completed. We might not be able to complete the transaction if we cannot be certain that the return can be submitted correctly.

The SDLT return is a complex document which runs to several pages and is not unlike an income tax return. Sometimes there are supplementary forms which have to be submitted with it. We must have all the information necessary to complete the return and have it signed or approved by you in advance of exchange of contracts. We would normally request this information from you at the commencement of the transaction. It is your responsibility to provide the correct information to insert into the return. If the information is incomplete or incorrect, you could be subject to penalties, delays in the processing of the return and difficulties with the registration of the transfer at the Land Registry. In serious cases you could be subject to prosecution.

Paying the tax due

We will submit the SDLT return as your “agent” but it is your responsibility to pay the tax due. We will normally calculate an estimate of the amount of the tax for you and collect this from you immediately before completion when collecting the balance of the purchase price. In straightforward residential transactions where a capital sum is paid for the purchase of a freehold or leasehold property, we will calculate the anticipated tax payable using the HMRC online calculator. On commercial transactions or where there is anything unusual about the transaction or where you may be able to claim a relief, we are unable to do more than estimate the likely tax and it will be your responsibility to ensure that we are given clear instructions on the claiming of any appropriate reliefs. This is something on which you should take tax advice and if necessary we can refer you to professionals who are qualified to give such advice. There is also much information on the HMRC website dealing with the ways in which the tax is calculated, available reliefs etc and you are recommended to familiarise yourselves with those.

If you are buying a property jointly with someone else, you are both liable for the full amount of the tax (the legal expression is “jointly and severally”) which means that if one of you doesn't pay their share, then the other party will have to pay all the tax due.

Our name has to appear in the form as your agent so that the acknowledgment form comes to us to use when we register the transaction with the Land Registry. In most cases we will have collected the funds necessary to pay the tax from you before completion and we will pay the estimated tax to HMRC on your behalf. However, you must understand that we are not your agent in the legal sense and will not have any liability ourselves to pay any of the tax due to HMRC.

When providing a fee estimate at the outset of the transaction, we normally include an additional fee for the preparation and submission of the SDLT return. Please note that this does not cover any further correspondence with HMRC following submission of the return, nor does it cover any investigation of the return by HMRC and if you require us to assist you with that, it will be charged to you at our normal hourly fee rates.

When we submit our completion statement to you, we will usually include an estimate of the SDLT but you must note that the HMRC's system is “pay now, check later” and is based on self-assessment, as it is with income tax. This means that HMRC might investigate the transaction many months later, often as much as 9 months after the effective date, and may require payment of more tax. In some cases, they can investigate matters many years after the transaction.

Further important points

Sometimes, complications may arise. For example the current transaction might be regarded as linked with a previous transaction or with a future transaction you may plan to enter into. This may especially apply in the case of "connected persons". You may need to obtain the advice of an accountant or specialist tax adviser in that situation. It is important that you tell us about any of the transactions you may have entered into or which you might enter into in the future which could be linked or connected in any way with the current transaction. Buying a number of properties from the same seller on different dates, for example, may be regarded as linked and this may increase the rate of tax payable. Buying a property through a relative or limited company may not be effective to avoid the higher rates of tax.

Tax is payable on all the consideration paid for a property and not just what is stated on the contract and transfer. You must tell us about any other money or services being provided by the seller or yourself as part of the overall deal. If money is to be paid for anything attached to the property such as burglar alarms or a conservatory or kitchen fittings then these items may also be chargeable to tax. If there is an obligation to pay a further instalment in the future if something happens, such as the grant of planning permission that might also be subject to tax. You must tell us if there are any such agreements or arrangements.

If the buyer is a company (and in some other cases where shares are involved in the overall deal) the tax will be imposed on the market value rather than the price being paid. You must therefore tell us about all aspects of the transaction.

You must tell us about any proposed apportionment of the purchase price between the building itself and other items such as carpets, curtains, plant, machinery, goodwill etc. Unless such apportionment can be objectively justified by reference to the value of the items concerned, HMRC may very well argue, often many months later, that there has been an attempt to evade tax which is properly due. If there is to be any apportionment of consideration in this way, we strongly recommend that you obtain independent and arm's-length valuations of the items in question, to demonstrate that the apportionment is fair and reasonable, in case HMRC challenge the position you have taken.

There are special provisions concerning leases and sometimes a further SDLT return will be needed in connection with subsequent dealings with the lease and it is your responsibility to make a diary note to file them at the appropriate time. Failure to file these supplementary returns will attract tax and penalties: sometimes penalties of up to 100% of the tax due may be levied. We do not accept any responsibility for reminding you of the need to file any additional returns and it is your responsibility to do so. For example,

additional returns may be needed if there is a change in the terms of the lease, or the amount of the rent (following any rent review) and/or at the end of the lease you remain in the property after the lease has expired.

Higher rates of SDLT are likely to be payable if you are purchasing an additional residential property whilst not replacing your main residence. ALL clients must please read carefully the separate section below entitled "Higher Rates of Stamp Duty Land Tax on Purchases of Additional Residential Properties" and the HMRC guidance to which it refers. Remember that it is your responsibility to provide us with the correct information to insert into the SDLT return so that the correct amount of tax is paid.

Where we have quoted a fee for the preparation of your SDLT return, it may be necessary to increase this if any of the points mentioned above apply to the transaction or if some other complexity occurs. Such additional fees will be charged at our normal hourly rate or we may suggest that you obtain specialist tax advice. Exceptionally, we may ask you to make separate arrangements for the submission of the SDLT return but please note these arrangements will have to be acceptable both to us and to any lender who is financing the transaction.

You are required by law to keep any relevant papers related to the SDLT return for at least six years after completion, even if you have disposed of the property in question.

PART 2 - Higher Rates of Stamp Duty Land Tax on Purchases of Additional Residential Properties

Introduction

From 1st April 2016 the government introduced higher rates of SDLT which are payable on certain purchases of additional residential properties.

The higher rates of SDLT are part of the Government's commitment to supporting home ownership. The higher rates apply to most purchases of additional residential properties in England, Wales and Northern Ireland where, at the end of the day of the transaction, individual purchasers own two or more residential properties and are not replacing their main residence.

Outline of the rules

The vast majority of transactions, such as first time buyers purchasing their first property or home owners moving from one main residence to another, are unaffected. The most common scenario where the higher rates are charged is where there is a purchase of a buy to let property or a second home in addition to a main residence.

Careful note should be taken of all of the following points:-

A purchase will be subject to the higher rates of SDLT if an individual purchaser owns, or is treated as owning, at the end of the day of the transaction, a major freehold or leasehold interest with a market value of more than £40,000 in another residential property. Particular rules apply to interests in properties which are subject to leases.

Property owned anywhere in the world is relevant in determining whether a property purchased in England, Wales or Northern Ireland is an additional property. This means that if you are purchasing your first or only property in England, Wales or Northern Ireland, you may pay the higher rates if you own an interest in property outside these areas.

Married couples and civil partners are treated as one unit (unless they are legally separated or separated in circumstances that are likely to become permanent). This means that property owned by either partner (or any minor children) will be relevant when determining if an additional property is being purchased or not. Therefore, an individual buying a property may be liable for the higher rates if his or her spouse or civil partner has an existing interest in a residential property.

Joint purchasers are treated as one unit. This means that property owned by any individual purchaser will be relevant when determining if an additional property is being purchased or not. Therefore, joint purchasers buying a property may be liable for the higher rates if any one of them owns an existing interest in a residential property.

The higher rates do not apply where the property being purchased is replacing the individual's main residence. Note the following rules apply regarding the timing of a sale of the main residence:-

Where the sale of a main residence does not take place at the same time as the purchase of the new residence then the higher rates will apply. However a refund of the additional SDLT can be claimed if the main residence is then sold within 36 months.

Where the sale of a main residence has already completed at the time of the purchase of a new residence, the higher rates will not apply provided that no longer than 36 months have elapsed since the sale (or since 25th November 2015, whichever is later).

Particular rules apply in some circumstances to inherited properties. A small share (50% or less) in a single property which has been inherited within the 36 months prior to the purchase may not be considered as an additional property. Any other interest in inherited property is likely to constitute an additional property.

The higher rate rules also generally apply to purchases of or ownership of residential properties by partnerships and/or individual partners in partnerships.

Particular rules apply and generally the higher rates are likely to come into play if you are a trustee of a trust or a beneficiary of a trust or your minor children (or those of your spouse) are beneficiaries of a trust.

The higher rates also generally apply to purchases (including a first purchase) of residential property by companies.

The higher rates

The higher rates are 3 percent higher than the current SDLT rates as set out in the chart below

Band	Existing SDLT rates	New SLDT rates**
£0-£125,000	0%	3%
£125,000 - £925,000	2%	5%
£925,000-£1.500,000	5%	8%
£1.500,000 +	12%	15%

**Transactions under £40,000 do not require a tax return to be filed with HMRC and are not subject to the higher rates.*

***Note that if contracts were exchanged on or before 25 November 2015 but the purchase has not yet completed, the higher rates will not apply.*

What you need to do

To assist you with understanding and then confirming to us whether the higher rates may apply to your transaction we would strongly advise you to visit the government website at <https://www.gov.uk/guidance/stamp-duty-land-tax-buying-an-additional-residential-property>, follow the link and read in full HMRC's Guidance Note dated 16th March 2016 entitled "Stamp Duty Land Tax: higher rates for purchases of additional residential properties".

Please note that we will act on information supplied by you and will submit the tax return on completion on your behalf acting as your agent. Our role as your agent is limited to helping you complete the form, submitting the form on your behalf and submitting the tax due (subject to receipt of the necessary funds to make the payment).

The SDLT rules are complex and it is not possible to explain all possible scenarios in this memorandum. If you have any doubt at all about whether or not the proposed changes will affect you, or you do not fully understand the above or HMRC's more detailed guidance, or have any reason to believe the proposed changes will or may affect your transaction and a higher rates of SDLT will be payable, please let us know as soon as possible.

PART 3 – First Time Buyer Relief

You can claim a discount (relief) so you don't pay any tax up to £300,000 and 5% on the portion from £300,001 to £500,000.

You are eligible if:

- **You, and anyone else you're buying with, are first time buyers, and**
- **You complete your purchase on or after the 22nd November 2017.**

If the price is over £500,000, you follow the rules for people who have bought before.

Results that move you

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