

2. SDLT – the basics

2.1 Overview

Stamp duty land tax was introduced on 1 December 2003 as a new tax on land transactions. SDLT was designed to replace the 300-year old stamp duty with a bespoke tax which would be a simply calculated and administered tax on transactions in land.

SDLT has rapidly become a complex tax which has been subject to regular revision during its short existence. In recent years very significant changes to the rates of tax and basis of calculation have been made, leaving behind the “slab” system, now replaced with progressive rates of charge (familiar throughout the UK tax system).

The divergence of rates between residential and non-residential or mixed-use property has brought these distinctions into sharp focus, particularly following the introduction of the higher rates for additional dwellings.

This chapter explores the basis of the charge to SDLT.

2.2 The elements of the charge to SDLT

2.2.1 *The elements*

There are three elements in the charge to SDLT:

- the acquisition
- of a chargeable interest in land
- for chargeable consideration.

Law: FA 2003, s. 43

2.2.2 *Acquisition*

Acquisition is extremely widely defined by the legislation to include almost anything which effects or may permit the passing of economic benefit or value in land.

SDLT only applies to the acquisition of land situated in England or Northern Ireland (the boundary being the low water mark of every part of England or Northern Ireland which borders the sea and the

land border with Scotland and Wales). The residence of the parties, and the place where the transaction is effected, are irrelevant.

Land and buildings transaction tax (LBTT) replaced SDLT on transactions involving land in Scotland on 1 April 2015. An overview of this separate but related tax appears at paragraph **2.13** below.

Land transaction tax (LTT) – or *Treth Trafodiadau Tir* – replaced SDLT on transactions involving land in Wales on 1 April 2018. An overview of the first tax introduced by a Welsh Government in nearly 800 years appears at paragraph **2.14** below.

The result is that there are now three property transaction taxes in the UK; SDLT in England and Northern Ireland, LBTT in Scotland and LTT in Wales, each with their own rates and thresholds administered by HMRC, Revenue Scotland and the Welsh Revenue Authority respectively.

SDLT is potentially applicable whether an acquisition takes place by agreement of the parties, operation of law, statute or court order. There is no requirement for the acquisition to be evidenced in writing.

An acquisition can include the creation, surrender, release or variation of a chargeable interest.

Law: FA 2003, s. 42, 43

Guidance: SDLTM 00040

2.2.3 *Chargeable interest*

The subject matter of a land transaction is the chargeable interest acquired “together with any interest or right appurtenant or pertaining to it that is acquired with it”.

In practice, this includes freehold and leasehold land together with any other estate, interest, right or power over land in England and Northern Ireland.

The benefit of an obligation, restriction or condition affecting the value of an estate, interest right or power over land in England and Northern Ireland is also within the definition of a chargeable interest. This would include contracts and obligations affecting the value of land such as a restrictive covenant.

Whilst this definition is broad, by way of example, the assignment of a right to receive an overage payment is not in itself a chargeable interest subject to SDLT because it is not an estate, interest, right or power over land.

Law: FA 2003, s. 43(6), 48

2.2.4 Exempt interest

Limited exclusions are granted from the extremely wide definition of chargeable interest, defined as exempt interests:

- any security interest (but not rentcharges);
- a licence to use or occupy land; or
- a tenancy at will or an advowson (the right to appoint a vicar to a parish), franchise (a grant from the crown such as the right to hold a market fair or to take tolls) or manor.

A security interest includes an interest or right held for the purposes of securing the payment of money or the performance of any other obligation. The commonest example of this is a mortgage. Whilst an exempt interest, the assumption of liability under a secured debt can have SDLT consequences (see **2.3.2** and **3.2.6** below).

Particular care must be taken over licences. The usual rules apply to distinguish a lease from a licence i.e. a personal right as opposed to a right or interest over land. For example, a licence agreement allowing a telecommunications operator to occupy a site must be carefully scrutinised to establish if rights of exclusive occupation have been granted, amounting to a lease.

If a licence is, in reality, a lease, the net present value of the licence fee may (in any event) not exceed the threshold for charge to SDLT. However, there may be an obligation to notify the transaction which would otherwise have not arisen.

Stamp office guidance has clarified that a tenancy at will is treated for SDLT purposes as a lease, but a type of lease that is an exempt interest. As such, a tenancy at will is outside the scope of the SDLT regime.

Law: FA 2003, s. 48; Sch. 17A, para. 1(6), 4(5),(6)

Guidance: SDLTM 00320, *Stamp Taxes Bulletin* 1/2013

2.2.5 Chargeable consideration

Chapter 3 is devoted to the definition of chargeable consideration.

2.3 Transactions exempt from charge

2.3.1 In general

A limited number of transactions are exempt from charge to SDLT. Transactions exempt from charge should be distinguished from exempt interests and transactions on which a relief is claimed.

Law: FA 2003, s. 49, Sch. 3

2.3.2 No chargeable consideration

Transactions which take place for no chargeable consideration are exempt from charge to SDLT. This covers gifts, testamentary dispositions and dispositions of property to beneficiaries under a trust in accordance with the terms of that trust. Most acquisitions by operation of law are not chargeable to SDLT.

The absence of any monetary consideration may not necessarily mean that there is no chargeable consideration. Care must be taken to ensure that there is a true gift. See **3.2.6**.

Example

Harry gifts a property worth £750,000 to Judd for no monetary consideration. There is a mortgage on the property of £680,000 at the date of the transaction. SDLT is due on the mortgage debt assumed by Judd.

It is important to ensure that the situations in which a deemed market value consideration is imposed do not apply (e.g. acquisition by a connected company, certain partnership transactions or exchanges of interests – see **3.6** and **Chapter 6** below).

Law: FA 2003, Sch. 3, para. 1

Guidance: SDLTM 00530

2.3.3 Grant of leases by social landlord

The grant of a lease by a registered social landlord to one or more individuals, for an indefinite term, or terminable by notice of less

than one month, is exempt from charge subject to certain conditions.

The exemption only applies to arrangements entered into between the registered social landlord and a housing authority (as defined in the legislation) whereby the registered social landlord provides accommodation to individuals nominated by the authority.

There is separately a limited relief from SDLT available for other acquisitions made by registered social landlords (see **9.13**) and from 26 May 2016 for all transfers of land to the Homes and Communities Agency under sections 51 and 53A of the *Housing and Regeneration Act 2008* (see **9.15.1**).

Law: FA 2003, Sch. 3, para. 2

2.3.4 *Transactions in connection with divorce*

Transactions made:

- by court order;
- by agreement by the spouses in contemplation of, or in connection with the dissolution or annulment of, their marriage or civil partnership; or
- as a result of a judicial separation or a separation order

are exempt from charge to SDLT. The exemption is not available if the transaction involves someone other than the spouse or civil partner.

Law: FA 2003, Sch. 3, para. 3, 3A

Guidance: SDLTM 00550

2.3.5 *Assents and appropriation by personal representatives*

The acquisition of property by a person in or towards satisfaction of his entitlement under a will or on intestacy is exempt from SDLT. This exemption is not available if the person acquiring the property gives any consideration for the property, other than the assumption of secured debt. See **7.5.1**.

Law: FA 2003, Sch. 3, para. 3A

Guidance: SDLTM 00570