CHARTER TAX

Helpsheet
Stamp Duty Land Tax

What is Stamp Duty Land Tax?

Stamp Duty Land Tax (SDLT) is a charge on the purchase of an interest in land and buildings in England and Northern Ireland. Similar charges arise on the transfer of land and buildings in Scotland and Wales, but this aspect of taxation has now been devolved and so some of the details are now different to that of SDLT.

The charge arises on UK land and buildings even if the purchase instrument is executed outside the UK or if the purchaser or vendor are located outside the UK – it is the location of the land / building that is the important factor.

The amount of SDLT payable is based on the "chargeable consideration" for a "chargeable transaction". And so, the two questions important to SDLT are:

1. Is this a chargeable transaction? And;
2. What is the chargeable consideration for this transfer?

If the answer to question 1 is "yes", the final question to answer is: What rate of tax applies to the transfer?

What is a chargeable transaction?

A chargeable transaction is defined as a transaction that is not an exempt transaction.

It is therefore necessary to review the various exemptions in legislation before determining whether a transaction is chargeable to SDLT. However, it is safe to say that the vast majority of transactions will be chargeable to SDLT.

Some of the more common examples of exempt transactions are:

- Transfers as part of divorce proceedings / dissolution of civil partnership
- Transfer to the beneficiary of an estate
- Transfers where there is no chargeable consideration (see below)

What is the chargeable consideration?

In most cases, chargeable consideration will be the price paid for the land / building. However, there have been various avoidance tactics over the years and therefore various anti-avoidance measures put in place.

The most common example of this is debt taken on by the new owner of the property, which is treated as consideration for SDLT purposes (though generally the market value rule applies for capital gains tax purposes).

Other non-monetary consideration is also taken into account when calculating the SDLT payable, for example other assets, or another property used in part-exchange.

Another significant exception is where property is transferred to a company – in which case it is always deemed to be transferred at market value for SDLT purposes.

What tax rate applies?

The rates applicable to a chargeable transaction depend on total consideration. The rates are applied to the relevant bands in the same way as income tax, with marginal rates only applying to the consideration above certain thresholds.

The final hurdle of calculating the correct rate is by no means the easiest, due to the many different rates, and possible reliefs to take into account.

Even for individuals purchasing residential property there are different rates that could apply. The 3% SDLT surcharge for those purchasing a second home has been well documented in the media (though the intricacies of its operation need to be considered on a case-by-case basis).

From April 2021, non-UK resident purchasers are required to pay an additional 2% on acquisitions of UK residential property (though this can be reclaimed if they become UK resident under the SDLT residence test within one year of the purchase completing).

Standard SDLT rates applicable for individual purchasers of residential property are:

Band	Rate
Up to £125k	0%
£125k to £250k	2%
£250k to 925k	5%
£925k to £1.5m	10%
Above £1.5m	12%

* For purchase of additional dwellings (“second properties”), add 3% to each of the rates above
** For non-resident purchasers from April 2021, add a further 2% to each of the rates above
*** Transactions completing by 30 June 2021 benefit of a nil rate band of £500k. Transactions completing by 30 September have a nil rate band of £250k

So the additional SDLT surcharge (on top of the normal SDLT rates above) for an individual purchasing residential property from October 2021 could be 0%, 2%, 3% or 5% depending on their circumstances! Note that the extended nil rate band eliminates the 2% band until the end of September.

First time buyers can benefit from an extended zero rate band up to £300k when purchasing their first home (although the extended nil rate band means that first time buyer relief is effectively superseded until the end of June 2021).

Lower rates apply to the acquisition of commercial or mixed use land, and there is relief for the purchase of multiple dwellings.

Qualifying purchases in new UK Freeport Sites (announced at Budget 2021) will also attract SDLT relief.

The standard rates for non-residential / mixed property are:

Band	Rate
Up to £150k	0%
£150k to £250k	2%
Above £250k	5%

Companies usually pay SDLT on the acquisition of property at higher rates. For example, companies buying dwellings over £500k generally pay a flat rate of 15% unless one of the reliefs (for example, for those developing and / or renting property) apply. Separate rules can apply when extracting a property from a company.

Given the difference in applicable rates, understandably it will often be better to argue a property is commercial rather than residential for SDLT purposes. This can give rise to some interesting debates when purchasing a residential property with substantial land.

We can advise on SDLT rates and how reliefs may apply to your situation.

What should I do now?

While in the majority of cases SDLT is straightforward and is just one of the costs of property acquisition, there is a significant minority of instances where the application of the rules is not straightforward.

When anticipating a transaction, it will normally be beneficial to seek advice in advance to ensure that you do not fall foul of any traps for the unwary.

We will be happy to assist in advising on SDLT for clients, and can also prepare SDLT returns for transactions, working with the conveyancing lawyers if they are not in a position to prepare and submit these forms.

For more information, please contact **Janet Pierce** on **janet.pierce@charter-tax.com** or **Tom Barker** on **thomas.barker@charter-tax.com** or call us on **+44 (0)20 7084 5771**

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