



Stamp duty land tax

Produced by Tax Training Ltd.

www.taxtrainingltd.co

020 8224 5695.

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Basics

From 1 December 2003, property transactions are subject to stamp duty land tax (SDLT) or its devolved equivalent. Although still commonly called stamp duty, SDLT is a completely separate tax. In particular, SDLT taxes the transaction, whereas stamp duty taxed the document giving effect to the transaction.

SDLT now only applies to England and Northern Ireland. It is replaced:

- in Scotland by land and buildings transaction tax (LBTT) from 6 April 2015
- in Wales by land transaction tax from 6 April 2018.

These devolved taxes have many provisions in common with SDLT.

SDLT is charged on the acquisition of a **chargeable interest** in land. This is not necessarily a sale. HMRC should be notified on form SDLT1 either on paper or online. This should be submitted and the tax paid within 30 days of the effective date. (Plans announced to reduce this to 14 days from 2017 were postponed to 2018, and now appear to have been postponed again.)

The **effective date** is completion of the construction or conveyance. To avoid artificial delays, the date can be when “substantially all” the work has been completed. HMRC takes this to mean 90% of the work, or a lower percentage if there is evidence of tax avoidance.

Transactions

Transactions for SDLT include:

- transfer of all or part of a freehold or leasehold
- option to acquire land
- granting a sublease from a lease
- surrendering a lease to the freeholder
- variation in a lease which is legally treated as a surrender and new lease
- variation in rent payable for a lease, or length of lease
- granting a right, such as sporting rights, mineral rights or right of passage.

An **option** to acquire land is a separate transaction from the acquisition.

Two transactions that are sufficiently connected, such as adjacent plots, can be **linked transactions** and tax as if they were one transaction.

Conversely, if one payment is made for **two or more transactions**, the consideration must be apportioned between them on a just and equitable basis.

The following are *not* regarded as transactions for SDLT:

- granting a licence
- a tenancy at will (except in Scotland)
- using land as a security, such as for a mortgage or secured loan
- archaic rights.

A **licence** is not subject to SDLT, but HMRC says that it must be a licence in substance and form, and not a lease dressed up as a licence.

The **archaic rights** are advowson (right to appoint a priest to a living), franchise (right to hold a fair or market) and manor (grant of title or ceremonial duty).

Consideration

SDLT is paid on the **consideration** for the transaction. This is the amount of money or money's worth for the transaction. It includes consideration paid to a third party, if it arises from the transaction.

If the consideration is paid in **instalments**, SDLT is charged on the total. No attempt should be made to discount future payments to net present value.

The consideration may be **uncertain**, such as by being related to income from use of land or being dependent on planning permission. SDLT is charged as if the contingency happened. For other uncertain amounts, SDLT is payable on a reasonable estimate. When the exact figure is known a further payment or repayment of SDLT may be made.

SDLT is not paid on **chattels**. These are items of moveable property, such as furniture, carpets and curtains. HMRC has provided guidance on what is included. These are broadly anything not fixed to the building, or which can be easily removed without damage (such as lamp shades and fitted carpets).

Goodwill is not itself subject to SDLT. If a property transaction includes goodwill, this must be excluded from consideration. In practice, this can involve haggling with HMRC officers.

If the transaction is subject to **VAT**, that is included in consideration, even if the acquirer is able to claim it back as input tax.

If the transaction is subject to the seller doing **future works**, those works must be valued and added to the consideration.

If the transaction comprises or includes an **annuity** of at least 12 years, the consideration is the first 12 years of payments.

If a transaction is made to a **connected person**, such as a close relation, the consideration may be replaced by market value.

Residential rates

There are separate rates for residential and non-residential property.

Before 2014, SDLT or stamp duty, was charged at a single rate on the whole consideration. This is known as the **slab basis**. For example, a residential property was taxed at 1% up to £250,000 and at 3% above that figure. So the tax on a £250,000 property was £2,500, while that for a property of £250,001 was £7,500.03.

This has now been replaced by the **slice basis** whereby the tax is charged at increasing rates on slices of property. The change from slab basis to slice basis was made from:

- 4 December 2014 for residential property
- 17 March 2016 for non-residential property.

For **residential property**, the basic rates (from 4 December 2014) are:

Purchase price band	SDLT payable
Up to £125,000	Nil
£125,001 to £250,000	2%
£250,001 to £925,000	5%
£925,001 to £1,500,000	10%
Over £1,500,000	12%

If a residential property sells for £500,000, the SDLT is calculated:

£125,000 taxed at 0%	£0
£100,000 taxed at 2%	£2,000
<u>£275,000</u> taxed at 5%	<u>£13,750</u>
<u>£500,000</u> taxed at	<u>£15,750</u>

From 1 April 2016, there are **higher rates** of SDLT for sales of residential properties:

- as a second home for a taxpayer (including a married couple or civil partnership)
- as a buy-to-let property
- by a company or other corporate entity.

The higher rates are 3 percentage points higher than the basic rates. This means that the higher rates of SDLT for residential property are:

Purchase price band	SDLT payable
Up to £125,000	3%
£125,001 to £250,000	5%
£250,001 to £925,000	8%
£925,001 to £1,500,000	13%
Over £1,500,000	15%

If such a property sells for £500,000, the SDLT is calculated:

£125,000 taxed at 3%	£3,750
£100,000 taxed at 5%	£5,000
<u>£275,000</u> taxed at 8%	<u>£22,000</u>

£500,000 taxed at

£30,750

It can be seen that the SDLT payable is £15,000 more than at the basic rate. This represents the additional 3% on the whole of the £500,000 consideration.

A **first-time buyer** pays less SDLT from 22 November 2017, provided the purchase price is £500,000 or less. Such a buyer pays no SDLT for a transaction up to £300,000, and 5% on the slice between £300,001 and £500,000. No relief is given for properties over £500,000.

Where **six or more dwellings** are the subject of a single transaction, it may be taxed at the non-residential rate, which usually means less SDLT is payable.

There is another provision for **multiple dwellings** from 19 July 2011. The SDLT may be calculated for one dwelling and then multiplied by the number of dwellings. This reduces the SDLT by allowing each dwelling to benefit from the nil and lower rate bands.

From 21 March 2012, residential property bought by a **company** or other “non-natural person” is subject to SDLT at 15%. This is one of three prongs of attack on corporate ownership of residential property. (The other two are annual tax on enveloped dwellings and capital gains tax.)

Non-residential rates

For **non-residential property**, the rates (from 17 March 2016) are:

Purchase price paid	SDLT payable
Up to £150,000	Nil
£150,001 to £5 million	2%
Over £5 million	5%

If a non-residential property sells for £500,000, the SDLT is calculated:

£150,000 taxed at 0%	£0
<u>£350,000</u> taxed at 2%	<u>£7,000</u>
<u>£500,000</u> taxed at	<u>£7,000</u>

Rates for leases

The amount of SDLT paid on a lease depends on whether it is:

- a new lease, or
- the assignment of part of an existing lease.

For a **new lease**, SDLT is payable on:

- any lease premium, and
- the net present value (NPV) of the rent payable under the lease.

If the rent is nominal, eg “a peppercorn”, SDLT is paid only the lease premium.

The lease premium is taxed as if it were a freehold property.

The NPV is taxed separately using different rates of SDLT.

For a residential property, the rate is:

Up to £150,000:	0%
Above £150,000	1%

For non-residential properties, the same rate was used up to 16 March 2016. From 17 March 2016, the rate is:

Up to £150,000:	0%
£150,001 to £250,000	1%
Above £250,000	2%

For example, a new residential lease is granted with a premium of £200,000, SDLT is paid at zero for £125,000 and at 2% on the balance of £75,000. SDLT of £1,500 is payable.

The **net present value** (NPV) of the rent is calculated in accordance with the formulae in Finance Act 2003 Sch 5. This requires each year's rent to be discounted by a factor. Since 2003, this factor has been 3.5% though it can be varied by regulation. NPV reflects the fact that £1 in ten years' time is worth less than £1 today.

The amount of the rent must include any VAT (such as where the landlord has exercised the option to tax). This applies even if the tenant can claim back the VAT as input tax.

For the first year, the NPV is the rent divided by 1.035. Alternatively, this is the rent multiplied by a factor 0.9662.

For the second year, the rent is divided by 1.035², which is the same as multiplying it by a factor of 0.9335.

Each year's rent, multiplied by the factor, is added for the term of the lease. In practice, these NPVs are taken from a calculator on HMRC's website, or equivalent.

For a new **non-residential lease**, the position changed from 17 March 2016.

The amount of SDLT due when you buy a new non-residential lease depends on the amounts of the premium (or purchase price of the lease) and rent you pay under the lease.

If the annual rent for the lease (not the NPV) is less than £1,000, as a buyer you pay SDLT on the premium. This is at the same rate you would pay on the sale price of a freehold non-residential property. This means you'll only have to pay SDLT if the premium is more than the threshold.

From 17 March 2016 you do not pay SDLT on the premium for annual rents of £1,000 or more if the premium is under the £150,000 non-residential threshold. The '£1,000 rule' has been abolished from this date.

Exemptions and reliefs

The following transactions are **exempt** from SDLT:

- transactions for which there is no consideration (with some exceptions)
- grant of a lease by a registered social landlord for at least five years
- transfer between parties on dissolution of marriage, or separation
- transfer under the terms of a will or intestacy
- transfer for less than £40,000 (even though higher amounts are not taxed anyway)
- grant of a lease for less than £40,000 and where annual rent is less than £1,000
- surrender of a lease that was exempt.

For a **sale and leaseback**, the leaseback element is exempt. Only the sale element is taxed.

Relocation relief may be claimed if an employer relocates an employee and buys his or her home.

Compulsory purchases are exempt.

A transaction made purely to comply with a **planning obligation** may be exempt.

Alternative finance arrangements allow for property to be acquired without paying interest as required under Sharia law for Muslims. Legal provisions aim to provide the same tax treatment as the arrangement that is copied. This is available to all taxpayers, regardless of whether they are Muslims.

A **charity** is exempt from SDLT on property acquired for a charitable purpose.

There are some exemptions to allow **shared ownership** of residential properties from 22 April 2009.

There is no SDLT for **intra-group transfers** made solely as part of a company reorganisation.

There are many specific exemptions for **government** and statutory bodies.

All these exemptions and reliefs are subject to conditions.

Sub-sale relief

Sub-sale relief deals with tripartite agreements, such as “**off plan**” selling by developers. This arises when A (perhaps a builder) sells to B (perhaps a development) who sells it to C (customer) before the property is built.

The relief is also available if A arranged to sell to B, who drops out and is replaced by C.

The basic principle is that the arrangement is taxed as if A had sold the property to C.

These arrangements were originally set out in Finance Act 2003. These were exploited for artificial avoidance, so the relief was recast in much longer legislation of Finance Act 2013.

This outlawed some of the more blatant schemes, and required B to submit a return, though not pay any tax.

Land and buildings transaction tax

From 1 April 2015, land and buildings transaction tax (LBTT) replaces SDLT for land in Scotland, regardless of the nationality of the parties.

The main differences between SDLT and LBTT are:

- LBTT has a higher threshold for paying tax
- there are different rates above the threshold
- residential leases are generally exempt under LBTT
- commercial leases have greater compliance under LBTT with three-year reviews
- sub-sale relief is restricted to major developments.

It should be noted that there are other differences that arise from the different legal system in Scotland. For example, a tenancy at will is a chargeable interest.

The rates are for commercial property are:

- zero up to £150,000
- 3% between £150,001 and £350,000
- 4.5% for amounts above £350,000.

For residential property, the LBTT rates are:

- zero up to £145,000
- 2% between £145,001 and £250,000
- 5% between £250,001 and £325,000
- 10% between £325,001 and £750,000
- 12% above £750,000.

Land transaction tax

Land transaction tax (LTT) replaces SDLT in Wales from 1 April 2018.

The rates for non-residential property are:

- zero up to £150,000
- 1% between £150,001 and £250,000
- 5% between £250,001 and £1 million
- 6% above £1 million.

For leases of non-residential property, the rates are charged on the net present value at:

- zero up to £150,000
- 1% between £150,00 and £2 million
- 2% above £2 million.

The rates for residential property are:

- zero up to £180,000
- 3.5% between £180,000 and £250,000
- 5% between £250,001 and £400,000

- 7.5% between £400,001 and £750,000
- 10% between £750,00 and £1.5 million
- 12% above £1.5 million.

There is no LTT on the rents payable for a residential lease, but there is on any premium.