Stamp Duty Land Tax: what is it?

SDLT is a tax that is likely to affect everyone at some point in their lives. Here Luke Goode explains how it works

Stamp Duty Land Tax (SDLT) was introduced for land and property transactions with effect from 1 December 2003. It is a tax that is payable by the transferee on the acquisition of an interest in land or property in England and Northern Ireland.

The amount due is calculated with reference to the purchase price of the land and is charged as a percentage of said price. Similar to the way in which income tax is computed, since 2014 SDLT is calculated in 'bands'. SDLT is only chargeable on amounts above the given thresholds. As at the time of writing this, the threshold for residential properties is £125,000. For non-residential land and property it is £150,000.

Importantly, SDLT is only due on the price actually paid (frequently known as 'chargeable consideration'). Therefore, in most circumstances, where no consideration is given, no SDLT is owed. However, when the two parties are 'connected' (this is determined by a variety of tests) then the transfer is deemed to take place at market value irrespective of the consideration given.

The rates of SDLT for UK Resident Individuals
On residential property:

Property or lease premium or transfer value	**SDLT rate**
Up to £125,000	Zero
The next £125,000 (the portion from £125,001 to £250,000)	2%
The next £675,000 (the portion from £250,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
Any amount above £1.5 million	12%

It should be noted that when one is purchasing a second residential property, an additional 3% charge is imposed. However, if this second property is to replace your main residence which is already sold then the additional charge does not apply. If it is not sold, you will be liable to pay SDLT but can request a refund if the previous residence is sold within 36 months of buying the second property. Refunds are still available after 36 months if, for example, some exceptional circumstances hindered your ability to sell the old residence.

On non-residential land or property:

Property or lease premium or transfer value	**SDLT rate**
Up to £150,000	Zero
The next £100,000 (the portion from £150,001 to £250,000)	2%
The remaining amount (the portion above £250,000)	5%

The above rates are, on the surface, quite simple. It can be seen that non-residential property is generally cheaper in terms of SDLT. Property might be 'mixed' use in nature, as in it includes elements of residential and non-residential use – such as a flat that is commonly situated above a shop on the high street. Mixed use properties see the benefit of being charged the non-residential rates.

Identifying whether a property is mixed in its use should be of high priority to a buyer as they stand to see a reduced SDLT charge. SDLT is self-assessed. In other words, it is the ultimate responsibility of the buyer to ensure that the correct amount is paid. It is therefore recommended that ,when in doubt, to obtain formal advice from a qualified professional.

The rates of SDLT for UK Resident Companies

On residential property:

When a company purchases an interest in land or property, things can indeed get even more complicated. When the interest is residential, the rates are the same as that which can be seen for individuals – only a higher rate of 3% is imposed on the company. This higher rate does not apply when the chargeable consideration is less than £40,000. For example, if the residential property acquired was transferred for a chargeable consideration of £200,000, the first £125,000 is charged at 3% and remaining £75,000 is charged at 5%.

In addition to the above, certain residential property transactions are subject to a 15% flat rate of SDLT. This applies when the chargeable consideration for the interest in a residential property exceeds £500,000. This rate was introduced as an anti-avoidance measure alongside the annual tax on enveloped dwellings (ATED). Generally, when the 15% rate applies, so too does ATED. There are SDLT reliefs available when the property falls under certain exemptions.

On non-residential land or property:

When the acquisition is in an interest which is non-residential, the first £150,000 is charged at 0%, the next £150,000 at 2% and anything above that at 5%.

Reliefs

For individuals:

Fortunately, there are reliefs available in respect of SDLT for individuals. First-time buyers benefit from a different banding system for purchases of residential property up to £500,000. In this instance, the first £300,000 is charged at 0% and the next £200,000 is charged at 5%. To qualify as a first-time buyer, the following conditions must apply:

- The individual must have never owned residential property before, or if joint purchases then all buyers must be first-time buyers;

- If the purchaser has had an interest in a residential property that is not a 'major interest' (a lease of less than 21 years), the relief can still apply;
- The first-time buyer must intend to occupy the property as their only or main residence;
- The purchase must not be linked to any other land transaction that is not relevant to the property purchase. An example of a relevant transaction is the purchase of a garden area connected to the property; and
- The transaction must not be subject to the higher SDLT rate (the additional 3% charge).

Multiple dwellings relief (MDR) may be available in circumstances when individuals purchase a number of properties in a single or linked transaction. The aim of this is to average out the chargeable consideration across the properties acquired such that SDLT is applied against this average and multiplied by the number of properties. In some cases, this has the effect of significant savings.

The issue is that the legislation is not all that helpful (thanks to some circular reasoning on the definition of a 'dwelling') and there is significant margin for error. Therefore, it is important that someone who understands the legislative references and the relevant case law is sought so that the most informed decision can be made – receiving an enquiry from HMRC years down the line on the amount of SDLT paid is best avoided, after all.

For companies:
The reliefs available to companies can be quite extensive but the conditions required can often complicate things further. As mentioned earlier, there are anti-avoidance measures in place to stop companies holding high value property (the 15% flat rate and ATED). Companies that seek to operate for bona fide commercial reasons will quite rightly find these measures unjustified. Fortunately, there are exemptions aimed at relieving commercial business with genuine intentions. If a business acquires the property for one of the following reasons then they may be exempt from the measures:

- Property rental, property development or property trading
- Financial institutions acquiring property in the course of lending
- Property to be made open to the public such that they can profit from the trade of the public (a wedding venue for example)
- To house employees
- To be used as a farmhouse
- Social housing

In addition to the above, where certain conditions are met, companies from within a group can claim relief if they buy or sell property to each other.

Consultation on mixed-use and multi-buys
A consultation held from November 2021 to February 2022 set out possible reforms to the way in which relief for mixed-use and multiple dwellings is permitted. HMRC is of the opinion that the prior mentioned are two areas that have been subject to incorrect claims and abuse of the rules.

MDR
HMRC has seen an increase in incorrect MDR claims and they have a strong history of challenging such claims at tribunal. Battling incorrect claims of MDR, especially when it goes to tribunal, is a cost to HMRC that the UK would do well to avoid.

It makes sense then that measures are brought in place to reduce these costs by stopping the abuse in the first place. However, the reforms suggested are questionable to say the least. It does make one wonder, is the purpose really to target incorrect claims?

The options proposed to change MDR are as follows:

- Allow MDR only where all the dwellings are purchased for a qualifying business use;
- Allow MDR only in respect of the dwellings that do qualify for a business use;
- Restrict MDR with a 'subsidiary dwelling' rule which would seek to not allow MDR when there is a smaller dwellings (such as an annex) that does not meet a third or more of the total value of the property as a whole;
- Allow MDR only for purchases of three or more dwellings.

HMRC stated that the intention of the reforms would be to reduce the scope for abuse. In a way, the above will reduce incorrect claims. Most blanket approaches will have some measure of success. However, where previous claims have been completely legitimate, they would now be disallowed.

Option one and two will completely disallow homeowners from making a claim.

Option three will reduce the ability to claim MDR when the smaller dwelling does not reach a certain value threshold.

Option four would likely reduce the number of MDR claims altogether.

Take the following example of an 'unreasonable' claim that HMRC provided:

A purchaser submitted a return following the purchase of a large house, but later claimed that an indoor entertainment area, swimming pool and toilet at the end of the garden were a separate dwelling

Any half-decent tax adviser could tell the purchaser that MDR would not be allowed. 'Unreasonable' claim is a bit of an understatement. The measures proposed do seem extreme and the majority are likely to get punished due to the mistakes of the minority.

The target of the reforms was brought into question earlier. To reiterate, is the target incorrect claimants, or is it homeowners?

Mixed-Use

HMRC has noted that purchasers are acquiring land that is almost entirely residential and claiming lower rates of SDLT due to the small amount of it that is non-residential. The reforms suggested are as follows:

- An apportionment basis for mixed-property;
- A threshold whereby a certain proportion of the property must be qualify as non-residential (50% was suggested).

The apportionment basis might be familiar to those with experience in principle private residence relief. The idea is that the proportion of the property that is residential will be charged at residential rates and the remaining non-residential proportion would be charged at non-residential rates. The proposed change seems reasonable and the amount taxed would more accurately reflect the nature of the property.

The threshold has the potential to negate those that add a token amount of non-residential land to the purchase to acquire the lower SDLT rate. The actual threshold suggested could indeed be a point of contention as 50% does seem quite high. In addition, one can foresee the potential for taxpayers to push boundaries in determining how much of the property is non-residential in an attempt to reach the threshold.

The proposed changes would mean that purchasers will likely need to seek professional valuations on the level of the property that is non-residential. This would potentially delay the transaction and would indeed increase costs to the taxpayer. Despite this, the changes do seem to align with HMRC's goal of levelling out the rates paid.

Final thoughts

SDLT will most likely affect everyone at some point in their lives. The responsibility of getting SDLT right lies on the taxpayers – it is self-assessed after all. Because of this, it is important that those who enter into a transaction that concerns property and land fully understand their liability to SDLT. Failure to do so may leave the transferee paying more tax than they need to or facing a HMRC enquiry years later.

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