

A 'must-read' for anyone
involved in property or land transactions...

Stamp Duty Land Tax

Michael Thomas

with contributions from
KPMG Stamp Taxes Group

Consultant Editor David Goy QC

CAMBRIDGE

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www.cambridge.org/SDLT

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Appendix 1 Practitioner checklist

Shown below are the key questions that a practitioner or potential taxpayer needs to consider when a transaction might have an SDLT consequence. Terms shown in bold are listed in the Glossary with cross-references to the relevant chapters of this book. The checklist is intended to remind the reader about the relevant concepts and is neither exhaustive nor a substitute for a full analysis.

- 1. Is the transaction potentially subject to SDLT?**
 - Is there a **land transaction**?
 - must be an **acquisition of a chargeable interest in land**
 - UK land must be involved in the transaction
 - exchanges are treated as two land transactions
 - Is there a **chargeable interest**?
 - either an interest in UK land
 - or the benefit of a condition, etc. affecting the value of an interest
 - a creation of a new interest
 - the surrender or release of an interest
 - the variation of an interest
 - What is an **acquisition**?
 - A transfer of an existing interest
 - a grant of a new lease
 - a creation of a new interest
 - the surrender or release of an interest
 - the variation of an interest
- 2. Who is the taxpayer?**
The **purchaser** in a land transaction must deliver a return and pay any SDLT on the chargeable consideration within thirty days of the **effective date**.
Who is the **purchaser**?
 - transferee of an existing interest
 - person entitled to a new interest
 - person whose interest benefits from a surrender, release or variation
 - in each case a person must either give consideration or be a party to the transaction to be treated as a purchaser
- 3. On what date is the SDLT payable?**
 - What is the **effective date** of the transaction?
 - normally completion

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- if the contract is **substantially performed** then the date of substantial performance is the effective date
 - for options it is the date on which the option is acquired
- (b) When is a contract **substantially performed**?
- when the **purchaser** takes possession of the whole or substantially the whole of the land; or
 - the **purchaser** becomes entitled to receive the rents or profits; or
 - a substantial amount of the consideration is paid or provided; or
 - in the case of a lease, the first payment of rent is made
4. What is the **amount on which SDLT is payable**?
- Is there any **chargeable consideration** for the transaction? The general rules include the following when given as consideration:
 - money or money's worth given directly or indirectly by the purchaser or a person connected with him
 - VAT chargeable in respect of the transaction
 - existing debt assumed by the purchaser (including transfer of land between parties subject to an existing mortgage and transfers takes over mortgage payments)
 - the release of debt due to the purchaser or owed by the vendor
 - the value of **building works** (though not where the works are carried out after the **effective date** on land held by the purchaser or a person connected with him and it is not a condition of the transaction that the works are carried out by the vendor or a person connected with him)
 - the value of the **provision of services**
 - the **net present value of rent** under special rules for leases
 - When do special rules operate in calculating **chargeable consideration**?
 - consideration attributable to more than one matter is apportioned on a just and reasonable basis
 - postponed** consideration is included without a discount
 - special rules for **partitions of joint tenements**
 - special rule for employee benefits
 - special rule for **right-to-buy** transactions
 - annuities** etc. limited to twelve years' payments
 - market value** rule applies to exchanges
 - discounted market value** may apply if the **purchaser is a connected company** or if part of the consideration is shares in a **connected company**
5. When is there **no SDLT to pay**?
- land is outside the UK
 - except interest including **licences and security interests**
 - chargeable consideration below the threshold – threshold is lower for property which is entirely **residential**

Stamp Duty Land Tax provides a detailed overview of SDLT and makes a comparison with the old stamp duty provisions, highlighting all the major substantive changes. It gives a detailed discussion of the legislation and puts forward suggested interpretations and planning opportunities. In addition to tables of statutes and cases, there are several useful appendices including a practitioner checklist, a table of exemptions and reliefs, and an analysis of Scottish property deeds.

Appendix 2 Table of exemptions and reliefs

Description	Paragraph of the book	FA 2003	Corresponding stamp duty exemption
Transfers where there is no chargeable consideration	Transfers for no chargeable consideration, including gifts and transfers of property into and out of trusts, see exempt	5.7	section 40, Schedule 4, paragraph 1
Certain grants of leases by registered social landlords	A limited range of leases granted by registered social landlords to individuals, see exempt	5.13	Schedule 5, paragraph 3
Transfers in connection with divorce or separation	Land transferred between the parties to a marriage in connection with or in consequence of divorce or judicial separation, see exempt	5.8	Schedule 3, paragraph 3
Variation of tenancy agreements, etc.	A transaction within two years of a person's death that varies a disposition of property for no chargeable consideration, see exempt	5.11	Schedule 4, paragraph 2

Description	Paragraph of the book	FA 2003	Corresponding stamp duty exemption
Acquisitions by bodies established for national purposes	The National Heritage Memorial Fund, the Historic Buildings and Monuments Commission for England, the Trustees and the Trustees of the National Heritage Memorial Trust, see exempt	5.68	section 69, FA 1985, section 149(1)
Acquisitive relief	Relief from SDLT due to a purchaser company acquires land as part of the ordinary course of its trade or business. There is a checkback of the purchaser company's control within three years.	5.79	section 62, Schedule 7, Part 2, paragraphs 8-13
Alternative property finance	Relief is available for financing arrangements including 'futures mortgages' where an individual will lend as a business transaction which leaves a track or results in a loan.	5.104	sections 72 and 73
Charitable relief	Purchases of land made by charities are exempt from chargeable consideration if the land will be used in the event of a dissolution of the charity within three years.	5.93	section 66, Schedule 8

(Cont.)

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About the authors

Michael Thomas, is a barrister at Gray's Inn Tax Chambers, the leading set of chambers specialising in taxation. His areas of expertise include commercial property transactions and stamp duties.

David Goy QC, Consultant Editor is one of the country's leading tax barristers and the author of several well-known practitioner textbooks. He has reviewed and edited the book, as well as making many suggestions on the content and format.

KPMG Stamp Taxes Group, headed by Steven McGrady has contributed planning and practitioner aspects to help make the publication user-friendly, and written several sections. Steven is a qualified solicitor and barrister and his expert team includes three former senior officers from the Stamp Office, including Gordon Keenay who was formerly Business Director of Stamp Taxes at the Revenue. KPMG has been representing the CBI in the consultation process for the design and implementation of SDLT. Members of the team who have contributed have participated in the committees established to look at lease duty, complex commercial transactions and the position in Scotland.

Introduction

Stamp duty on land and property currently raises more tax revenue in the UK than inheritance tax and capital gains tax put together. Until a few years ago, stamp duty was often something of an afterthought when advising on land transactions but now it is a priority. Stamp duty on land transactions, based on the Stamp Act of 1891, has now been abolished and replaced with a new tax, Stamp Duty Land Tax (SDLT) which is intended to raise about £5 billion per year. The new law fundamentally changes the nature of the tax.

Readership...

Stamp Duty Land Tax sets out to provide a comprehensive commentary on the new tax and to explain the principles which underlie it. The text is written in plain language and is intended as an invaluable handbook for:

- Property lawyers
- Solicitors
- Conveyancers
- Accountants
- Surveyors
- Property developers
- Tax practitioners

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How will the tax affect you?

- Deadlines for the new tax are tight – submission of returns and payment will be required within 30 days of the transaction
- SDLT is a completely new tax founded on new concepts, and is directly enforceable on the purchaser
- There is an onerous compliance regime and penalties based on self-assessment
- The rules are complicated, especially in deciding whether a transaction is notifiable
- SDLT has been designed to close the loopholes in previous legislation
- The law includes several new areas including the introduction of a new formula for leases
- Inland Revenue has a raft of new information powers – you need to know how these could affect you and your clients

Why Stamp Duty Land Tax is essential reading...

- At around 200 pages, *SDLT* is the best way for you to get up to speed on the new tax regime quickly
- Expert authors – *SDLT* has been written and edited by leading specialist practitioners
- Clear and concisely written – *SDLT* covers the salient points
- Accessible – *SDLT* avoids jargon and is written for the non-specialist as well as the specialist
- Relevant – covers just land and property transactions and not all stamp duties
- Includes references to Scottish law, and the law relating to Northern Ireland
- The book has been designed for you to dip in and out of so you can find the information you need quickly
- A practitioner checklist offers practical help in submitting returns
- A useful summary table of exemptions and reliefs is also included
- Access to an online bulletin board will ensure that you are kept informed of any last minute changes and key developments



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