

Stamp Duty Land Tax

Your responsibilities

Stamp Duty Land Tax ("SDLT") is a tax on land transactions. The Inland Revenue requires you to file an SDLT Return with payment of the SDLT (if chargeable) on all freehold, many leasehold and other land transactions, unless exempted or below the notification threshold as set from time to time by the Inland Revenue.

Specialist tax advice (whether SDLT or otherwise) on the tax consequences of your intended activity should be sought as early as possible in the transaction. We can usually provide Stamp Duty Land Tax advice on most straightforward transactions but may have to refer to specialist tax advisors unusual or complex arrangements or circumstances.

Early on in any transaction, and before committing yourself, you need to consider the following:

Key points:

- **Time limits:** To avoid penalties (starting at £100) your SDLT Return has to be submitted with any tax due within 30 days of the 'effective date', usually taking possession (i.e. keys to the door) or completion, whichever is earliest. So please tell us if, by agreement with your landlord/seller, you take occupation prior to completion.
- **Provision of information:** it is your responsibility to provide us with correct information to insert in the Return. If you do not provide all the information needed, or the information is incorrect, you could be subject to, penalties, delays in the processing of the Return and the registration of the land transaction at the Land Registry (if applicable) and even prosecution.
- **Barlow Robbins LLP as agent:** Our name appears on the SDLT Return as your 'Agent' so that the Inland Revenue acknowledgement and receipt are sent to us to enable us to register the land transaction (if applicable). Beyond the initial Return, we will cease to act as your agent unless and until we receive your further instructions.
- **Liability to pay:** It is your responsibility to pay the SDLT. If you are buying the property jointly with someone else you are both liable for the full amount of tax due 'jointly and severally'. In other words if one of you will not pay their share then the other party will have to pay all the SDLT due.
- **Pay now check later?** The amount of tax we calculate to be due is an estimate based on the information provided by you to us and rates at that date. The Revenue's system is 'Pay now, check later' based on self-assessment and, as with Income Tax, this means the Inland Revenue might investigate the transaction as late as 9 months after your Return, and may ask for more

tax. In some cases (e.g. fraud or negligent conduct) the Revenue can investigate matters up to 21 years later. You might decide to deal with any such enquiry yourself, or have your accountant deal with it. If the Inland Revenue decide more SDLT is due you will have to pay it, although there are appeal procedures.

- **Linked transactions:** The current transaction might be regarded as 'linked' with a previous transaction or any future transaction you may enter into with anyone 'connected' with you or the seller, and this may result in a higher rate of tax being applicable to the collective purchase price of the properties. 'Connected' has a technical meaning used by the Inland Revenue and the circumstances must be assessed and interpreted in light of the relevant legislation. You must tell us about any other transaction that you might have entered into or might enter into which may be linked or connected in any way so we can establish whether such a linkage exists. Buying a number of properties from the same seller on different dates, or the use of a relative or group company to buy some of the properties may be regarded as linked.
- **Consideration:** SDLT is payable on all the 'consideration' paid for a property including any VAT paid on that consideration, not just the figure shown in the contract or transfer and so you must tell us about any other monies or services being provided by the seller or yourself as part of the overall 'deal', for example, payment for fixtures and fittings or third party costs. Consideration may also be contingent, for example, a further payment being made on the grant of planning permission or based on an overage provision. You must tell us if there are any such agreements that we have not documented for you.
- **Market value:** SDLT is payable on the open market value, hence to calculate SDLT due we must be aware of any discounts allowed, e.g. a concessionary price to a group company.
- **Goodwill etc.:** If the purchase price is split between a building itself and other items such as carpets, curtains, plant, machinery or goodwill etc., to apportion the purchase price between these items you will require proper valuations. Apportionment may save SDLT but if you do not have valid evidence to back up an apportionment the Inland Revenue might argue months later that there has been tax evasion, especially if the result is that the value of the building itself is just below one of the tax bands as set from time to time.
- **Record keeping:** The Inland Revenue require you to keep any relevant papers related to the Return for at least 6 years, even if you have disposed of the property in question.
- **Penalties:** As with any tax return, there are financial penalties for filing late, for completing incorrectly or for failing to file starting at £100 for up to 3 months late, and there are also criminal sanctions for fraud.

Our role

Once your purchase, lease or other land transaction completes, we will (if necessary) make a Return on your behalf, based on information provided by you. If you have not done so before completion, you will need to check, sign and return the Return to us with cleared funds to enable us to pay the SDLT due within the 30 day period. We will then submit the Return and pay the SDLT to the Inland Revenue. In straightforward cases, our fee quote will include this initial Return. We will then cease to act as your agent although we will comply with the Inland Revenue record keeping requirements.

Our fees will not cover any further correspondence with the Inland Revenue on the matter or any investigation of the Return by the Inland Revenue which will be charged to you at our normal hourly rates.

If your transaction turns out to be one of unusual complexity, our fee quote may need to be increased. In such cases you will be charged on the basis of our normal hourly rates. On occasions, we may suggest either that you obtain specialist tax advice, in which case we can put you in touch with a specialist tax adviser and liaise on your behalf. Alternatively, we may advise that it is not appropriate for us to submit the Return on your behalf. In these unusual circumstances, you will have to make your own arrangements the filing of the Return. These arrangements will have to be acceptable to any lender who is financing the transaction.

Further Return due?

In many cases, often involving leases and rent reviews, further SDLT Returns will be needed and it is your responsibility to make a diary note to file them at the appropriate time. We cannot accept any responsibility for reminding you of the need to file any additional Returns and it is your responsibility to either file the Return or, at the relevant time, to instruct us to do so on your behalf.

Additional returns may for example be required in the following circumstances:

- **Rent reviews:** The first Return is completed based on an initial calculation using the known rent during the first 5 years of the term of the lease and a fair and reasonable estimate of any unknown changes to the rent (whether because of provisions for review or rent sharing or turnover arrangements) arrived at using information provided by you. Once rent is ascertained following a review within the first 5 years, or beyond the first 5 years of the initial Return if that rent increase is deemed "abnormal" (i.e. broadly speaking more than a 20% increase per annum), additional tax (or possibly a refund) may be due on the excess rent and a further Return required.
- **Any other variations to the terms of the lease:** Most variations now trigger the need for a further Return, and possibly additional tax, so please liaise with us/your tax advisors prior to agreeing to any variation to the terms of your lease to consider the SDLT consequences of doing so, and to avoid penalties for failing to comply with the SDLT reporting regime.

- **Occupation beyond contractual expiry of lease:** When you stay in occupation of premises following the contractual expiry of the lease, your continued occupation may trigger the need for a further Return and additional tax may become payable. The rules on "holding over" are complicated and advice should be obtained at any early stage, ideally a minimum of a month before your lease expires and, in any event, when negotiating terms for your continued occupation, so that appropriate SDLT advice can be given. Advice at an early stage will not only limit exposure to penalties and interest but may also mean we can document the new arrangement in a way to minimise your SDLT exposure.