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Little boxes

PETER RAYNEY explains how practitioners can get to grips with the new stamp duty land tax residential property rules.

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History is likely to remember George Osborne for his radical shake-up of stamp duty land tax (SDLT) in the 2014 autumn statement. At a simple stroke, he introduced the "slice system" for calculating this charge on residential property and kicked the long-established and iniquitous "slab system" into the legislative long grass. In recent years, we have witnessed significant increases in SDLT on residential property so these changes are particularly welcome, especially because they bring an end to the distortive "cliff edge" impact of the slab system.

Since 4 December 2014, SDLT on residential property has been calculated on a progressive sliding scale, with the tax being determined by reference to the SDLT rate for each relevant band – or "slice" – of chargeable consideration. It will now apply in much the same way as income tax. Previously, all SDLT was charged on a "slab" basis, with a single tax rate being applied to the whole amount of the consideration. This regime still applies to commercial property transactions, with the appropriate rate being charged on the total consideration.

We will now explore the operation of the new regime in more detail and its implications for property transactions.

SDLT basics

As a reminder of some basic principles, SDLT is payable not only on the normal purchase of UK land, but also on the creation, release, surrender or variation of a chargeable UK land interest (FA 2003), s 43). Special rules apply on the grant of a lease.

The tax is also charged on the value of any fixtures substantially attached to the land under land law. Items that retain their character as chattels or moveable property, such as most furniture or carpets, will not be subject to the charge.

Broadly, SDLT is payable when a land transaction is "completed" by the purchaser (FA 2003, s 42). However, the SDLT charge is brought forward when a land transaction is "substantially performed"; for example, where a substantial (90%) amount of the consideration is paid (which includes the first rent payment on a lease) or when the purchaser takes possession (for example, occupation).

SDLT is generally charged on the actual consideration given by the purchaser in money or money's worth (see FA 2013, Sch 4 for the detailed rules). Thus, a gift of property is normally exempt from SDLT because no actual consideration is given (FA 2003, Sch 3 para 1). However, any assumption of debt by the purchaser is treated as consideration given and SDLT would be applied to the amount of debt assumed. Although there is no special exemption for property transfers between spouses or civil partners, they often avoid SDLT because they are pure gifts. In a limited number of cases, a deemed market value rule applies – one of the most common situations is when property is transferred to a connected company (FA 2003, s 53).

KEY POINTS

- December 2014 saw major changes to the stamp duty land tax regime for residential property.
- The old "slab basis" rates are being retained for non-residential and mixed-use properties.
- Transitional rules apply where contracts were exchanged before 4 December, but completed after 3 December 2014.
- HM Treasury statistics suggest that there is more than one break-even point in the changed rates.
- The linked transactions rule prevents fragmented transactions benefitting from lower tax rates.
- Multiple dwellings relief has been retained under the new regime.

Is it residential property?

Different SDLT scales apply to "mixed use" properties, ie where there is both residential and non-residential use (see below). Furthermore, since 4 December 2014, the charge on each type is now calculated differently. Residential property uses the slice basis of calculation, but the slab basis is being retained for non-residential and mixed-use property.

Residential property includes buildings that are used as or are suitable for use as dwellings, their gardens and grounds and residential accommodation for school pupils and students, other than those in higher education (FA 2003, s 112 to s 119).

SDLT RATES

Chargeable consideration	*Rate*
Up to £125,000	0%
£125,001 to £250,000	2%
£250,001 to £925,000	5%
£925,001 to £1,500,000	10%
Excess over £1,500,000	12%

The status of a residential house or flat is normally clear-cut and, in HMRC's view, this is based on its use at the effective date of the transaction. This overrides any past or intended future use. However, if an unused building was last used as a dwelling, it is generally taken to be "suitable for use as a dwelling" in the absence of any contrary evidence. Similarly, an existing building is treated as a dwelling if it is being adapted or marketed for, or restored to, domestic use (see HMRC's *Stamp Duty Land Tax Manual* at SDLTM29900).

Various properties are specifically excluded from being residential, for example, student halls of residence, care homes, hospitals and hospices.

An important deeming rule applies to the transfer of six or more dwellings in a single transaction, which treats them collectively as non-residential for SDLT purposes (FA 2003, s 116(7)). This means that the SDLT rate is normally limited to 4% (the maximum rate for commercial buildings, but at the same time the availability of multiple dwellings relief (MDR) is not denied (see the following page).

Calculating the SDLT

Since 4 December 2014, SDLT is charged on the slice system, with separate rates applying to the amount of consideration falling within each charging band. See ***SDLT Rates***.

These rates invariably produce sizeable SDLT savings at the lower end of transaction values. The basic calculation is set out in new FA 2003, s 55(1B), which was introduced by the Stamp Duty Land Tax Bill 2014-15, with effect from 4 December 2014. The calculation is demonstrated in ***Charlie's House***.

Special transitional rules apply to buyers who exchanged contracts and substantially performed them before 4 December 2014. In such cases, where the transaction is completed after 3 December 2014, they can elect to have their SDLT calculated under the old basis. The new rates apply to residential property transactions in Scotland until the land and buildings transaction tax (LBTT) replaces it on 1 April 2015.

HMRC have updated their stamp duty calculator (at www.lexisurl.com/ph6df) enabling SDLT liabilities to be calculated online.

HMRC announced that the new SDLT charge on house and flat purchases costing less than £937,500 is lower than under the old regime. However, the cost is also lower between £1,000,001 and £1,125,000; above that liabilities rise under the new regime.

This is illustrated by the helpful ***HM Treasury Graph*** reproduced in the 2014 autumn statement releases. It will be seen that there is more than one break-even point in the graph.

CHARLIE'S HOUSE

An example of the basic SDLT calculation on residential property.
On 6 February 2015, Charlie purchases a large house for £480,000 in Llandudno. The SDLT on the purchase is £14,000, calculated as follows.

Amount charged £	*Rate* %	*SDLT* £
125,000	0	0
125,000	2	2,500
230,000	5	11,500
480,000 (totals)		£14,000

If Charlie had completed the purchase of his house before 4 December 2014, he would have paid SDLT under the old regime of £14,400, being 3% x £480,000 (under the old slab system of calculation).

Company acquisitions

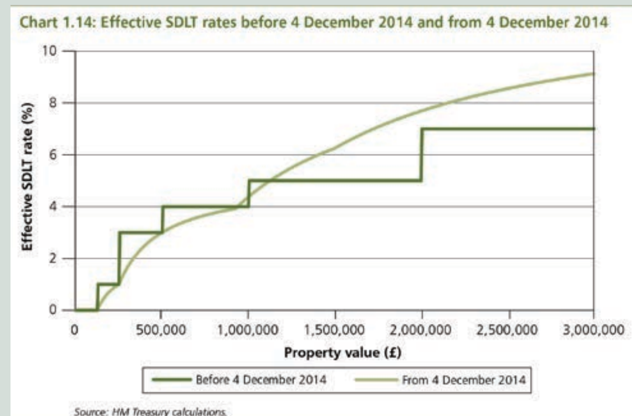
There is no change to the penal 15% rate SDLT that applies when a company purchases residential property for more than £500,000 (FA 2003, Sch 4A). Acquisitions of such properties by partnerships or limited liability partnerships that include a corporate partner or collective investment schemes are also caught.

Such "expensive" properties (known as "higher threshold interests" (HTIs) are all subject to a flat 15% rate on the entire consideration. However, certain transactions are excluded from the 15% HTI charging rule; for example, when a company acquires a property or properties for the purposes of its property rental business or property development or dealing trades.

Linked transactions

The "linked transactions" rule in effect prevents transactions being fragmented to benefit from lower SDLT rates. Broadly, linked transactions are those made as part of a single scheme or arrangement between the same seller and the same purchaser.

HM TREASURY GRAPH



BERNARD'S BUSINESS

SDLT on linked transactions of residential property.
For many years, Bernard has operated a residential property letting business reporting the net rental income on his self-assessment tax return.

Bernard has decided to transfer the three residential properties comprised in the business to new company, Bernard Properties Ltd, 100% owned by him. It is proposed that the properties will be sold to the company at their current market value as follows:

Property	*Market value* £
Cayat Cottage	220,000
12 Elsa Road	150,000
5 Georges Street	300,000
Total	£670,000

Note.
Because Bernard is connected with Bernard Properties Ltd under CTA 2010, s 1122(3), these transactions will always be based on the market value for SDLT purposes under the rule in FA 2003, s 53, irrespective of the actual consideration that is given.

These transactions would be treated as linked because they are between the same seller and purchaser and are part of the same economic arrangement. Thus, the total SDLT liability would be £23,500, being based on £670,000 (the relevant consideration) for all the linked transactions, as follows.

Amount charged £	*Rate* %	*SDLT* £
125,000	0%	0
125,000	2%	2,500
420,000	5%	21,000
670,000 (totals)		£23,500

However, it is possible to substantially reduce this SDLT liability by making a claim for multiple dwellings relief. See ***MDR Claim***.

For these purposes, dealings with those "connected" with the purchaser or seller (as defined in CTA 2010, s 1122) are also caught.

Determining whether two or more transactions are linked is a question of fact based on all of the surrounding circumstances. For example, it is likely that a series of single transactions between the same seller and purchaser would be linked if they were, in essence, part of the same deal or arrangements. The period of time between the transactions is unlikely to be a material factor but, if they take place within a relatively short period, this often indicates that they are part of the same deal.

From 4 December 2014, the SDLT on linked residential property transactions is calculated by aggregating the separate consideration for each linked transaction – this gives the relevant consideration (FA 2003, s 55(4)). The SDLT is then computed on the relevant consideration based on the principles explained above – see ***Bernard's Business***. However, the SDLT on linked transactions of residential property may be reduced by making a claim for multiple dwellings relief (MDR) under FA 2003, Sch 6B (see below).

FA 2003, s 55(1C) provides that the SDLT chargeable for each separate transaction is calculated by apportioning the total tax charge on the relevant consideration, in other words for all linked transactions, by reference to the following fraction: C/R, where:

- C equals the consideration for the relevant individual transaction; and
- R equals the relevant consideration, ie the total consideration for all the linked transactions.

Thus, in ***Bernard's Business***, the SDLT payable on Cayat Cottage would be £7,716, calculated as follows:

- SDLT on three linked transactions = £23,500
- SDLT on Cayat Cottage (£23,500 x £220,000/£670,000) = £7,716.

If six or more separate dwellings are involved, the deemed non-residential property rule in FA 2003, s 116(7) applies. This means that the SDLT is calculated under the non-residential rules, which carry a maximum rate of 4%, calculated under the slab system.

Multiple dwellings relief

Where several properties were acquired under the linked transactions rule, the MDR was often used to mitigate the harsh impact of the slab system. Under the old regime, a higher

MDR CLAIM

MDR on 'linked' residential property transactions.
If Bernard Properties Ltd (in ***Bernard's Business***) makes an MDR claim, its SDLT liability would be calculated as follows.

(a) Average value of dwellings (£670,000/3) = £223,333
(b) SDLT on average value (AVSDLT) as calculated below = £1,960

Amount charged £	*Rate* %	*SDLT* £
125,000	0	0
98,000	2	1,960
223,000 (total)		1,960

(c) SDLT is £5,880, being three dwellings x AVSDLT of £1,960.
(d) However, since the SDLT of £5,880 is less than £6,700 (effectively the minimum charge of 1% of the total dwellings consideration – £670,000 x 1%), the MDR claim produces an SDLT liability of £6,700. This still produces a worthwhile SDLT saving of £16,800 (ie £23,500 – £6,700).

SDLT rate would typically be applied to the aggregate value of all the purchased properties, often leading to a substantial SDLT bill. However, by making an MDR claim, the purchaser would be able to compute their SDLT by reference to the average value of each property (subject to a minimum rate of 1%).

MDR has been retained under the new regime and can still produce SDLT savings under the new slicing basis of calculation. If the relief is claimed, the total SDLT is computed as follows.

- Calculate the SDLT by reference to the average value of the total dwellings included in the claim, ie total dwellings consideration/total dwellings. This will be referred to as the average value SDLT (AVSDLT).
- Calculate the total SDLT liability by multiplying the AVSDLT by the total number of dwellings.
- Note that the SDLT must at least be equal to 1% x total dwellings consideration. Thus, a 1% SDLT rate must be used when the effective SDLT rate on the total dwellings consideration is less than 1%.

The mechanics of this relief are illustrated in ***MDR Claim***.

Non-residential property

It is worth repeating that there has been no change in the way that SDLT is calculated on non-residential and commercial property. This also includes mixed-use property with residential and non-residential elements, such as a shop with residential accommodation above.

The tax on such properties must therefore still be calculated on the slab basis with the applicable SDLT rate (the maximum rate being 4% where the consideration exceeds £500,000) being applied to the entire consideration.

Final thoughts

Under the new regime, the Chancellor estimated that 98% of house-buyers would pay less SDLT (or the same amount) – so these are the real winners. For example, the SDLT on a property costing £510,000 – the current average price of London property – is now £4,900 lower. Given that these measures are expected to cost the Treasury some £4.4bn over the next five years, they represent a significant giveaway in these still relatively austere times.

On a political level, many saw the SDLT reforms as stealing a march on the Labour party because the change was accompanied by a substantial increase in the SDLT rates for (Labour's) "mansion tax" type properties. It is arguably much fairer to impose a one-off SDLT charge as opposed to an annual mansion tax.

Peter Rayney FCA, CTA (Fellow), TEP runs an independent tax consultancy practice: Peter Rayney Tax Consulting. The new edition of his popular book, *Tax Planning For Family & Owner Managed Companies – 2014/15* (Bloomsbury Professional), is now available.

Book review

TAX CHAMBER HEARINGS: A USER'S GUIDE

Author: Keith Gordon
Publisher: Claritax Books, third edition; 277 pages; £74.50

The third edition of *Tax Chamber Hearings: a User's Guide* is useful for readers who know little or nothing about tribunals, and for those who wish to take a different course of action when in disagreement with a tax inspector, be it HMRC review, alternative dispute resolution or judicial review.

The book explains the advantages and disadvantages of HMRC reviews, what can and cannot be referred to tax tribunals, and covers considerations for accepting late appeals, which will be of particular interest to overworked accountants who have missed appeal deadlines. Keith Gordon makes clear that, as well as considering reasonable excuse for a late appeal, tribunals also look at the overall fairness and risk of injustice.

He explains the categorisation of cases (such as default paper that usually have no hearing), the requirement for lists and provision of documents, statements of case, and skeleton arguments.

It is helpful to read the rules governing the approach of tribunals, including their view of new arguments, late evidence, parties acting unreasonably, and costs and opting out of them. The book deals with consolidations of two or more proceedings, adjournments, directions (for example, to produce documents or for witnesses to attend), "unless orders", and circumstances in which cases can be struck out.

The book makes sure readers will know what to expect when they get to the tribunal room. They will find out whom to address and how to address them, and they will be clear on trial bundles, burden of proof, and presentation of evidence.

The latter part of the book focuses on what happens after a hearing and on the rights to a full statement of the tribunal's findings and decision, as well as requests for reviews, set-asides, and appeals (including which cases cannot be appealed).

Appendices cover which chamber deals with which taxes and social security matters, categorisation of cases, agreed facts, witness statements and skeleton arguments. To cap it off, there is a list of the tax cases referred to in the book.

No one will be able to fight a case at tribunal with this book alone, but it will give readers a thorough understanding of what is possible before they commit to appealing to the tribunal. It will give them confidence to defend clients no matter what dispute resolution route is chosen.

Reviewed by Alex Byrne