

# Driving Facts

TAX NEWS

## Stamp Duty Land Tax – How does it work?

Motor dealers are commonly involved in land and property transactions. This could simply entail the buying or selling of land to unconnected third parties, or could form part of an internal restructuring process where potentially numerous land transactions take place between connected parties.

Stamp Duty Land Tax (SDLT) arises on land transactions relating to property situated in the UK and is important because it can often involve a large liability which must be paid within 30 days of the completion date of the transaction. In the next issue of Tax News we will illustrate some of the reliefs that are available to keep this charge to a minimum but as there is sometimes a lack of understanding of how a charge is calculated in the first place, this article introduces the main provisions concerning the sale of freeholds and the granting of leases, concentrating on the rules for commercial property.

### At what point does the charge arise?

For SDLT purposes a transaction is generally treated as taking place when the conveyance is completed, not when contracts are exchanged. The exception to this is when the transaction is treated as being "substantially performed" prior to conveyance.

A contract is defined as being substantially performed when:

- The purchaser takes possession of the whole or substantially the whole of the subject matter of the contract i.e. receives or becomes entitled to receive rent or profits; or
- When a substantial amount of consideration is paid or provided. Substantial is not defined in the legislation however, HMRC have indicated that a substantial amount of consideration will be not less than 90%.

So therefore, when a contract is substantially performed and is subsequently completed, both are notifiable transactions, i.e. 2 SDLT returns are required.

### Transfer of a Freehold Interest

SDLT is charged at different rates dependent on whether we are considering residential or non-residential property. The rates for non-residential property are as follows:

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Consideration	%
Not more than £150,000	0
More than £150,000 but not more than £250,000	1
More than £250,000 but not more than £500,000	3
More than £500,000	4

Once the relevant threshold is exceeded, the whole of the consideration is subject to tax at the rate applicable to that threshold not just the excess. As this can give rise to extortionate marginal rates of tax where thresholds are only just breached, it is worth giving careful thought to the allocation of values if a bundle of assets is being bought with the property.

### SDLT Charges on Leases

There are essentially two parts to the charge to SDLT through leases; the lease premium if any and the total amount of rent payable under the lease.

### Lease Premiums

This is fairly straight forward, SDLT being charged under the normal rules as if the lease premium were the chargeable consideration under the transfer of freehold premise, with the same rates of duty being chargeable and at the same rates, with the exception that if the rent payable under the lease exceeds £600, the nil% band is not available.

### Rents

The total rent payable over the total duration of the lease is chargeable to SDLT at the following rates for non-residential land:

Relevant Rental Value	%
0 - £150,000	0
More than £150,000	1

Where the relevant threshold is exceeded, only the excess attracts SDLT.

SDLT is charged on the net present value of rent. This is effectively the full amount of rent chargeable under the lease, with a discount permitted by HMRC to reflect the time value of money.

Problems can arise when establishing the term of the lease. For instance, if a lease is granted for a fixed term, any break clauses and renewal clauses are ignored in determining the term of the lease for SDLT purposes. However, when that fixed term lease comes

to an end without the landlord acquiring possession of the property, the extension is treated as a periodic tenancy which extends the term of the lease. This means that the original SDLT calculations must be revisited adding on the extra year. Leases granted for an indefinite period of time are treated in a similar way in that they are initially treated as being for a fixed term of one year, but continuation beyond the year requires recalculation in accordance with the rules set out above.

## Childcare Vouchers

Did you know that an employer can provide their employees with approved childcare vouchers up to the value of £55 per week or £243 per month tax and NIC free providing certain conditions are met? These vouchers will be widely accepted by nurseries, play schemes and childminders and can provide an attractive way of remunerating employees.

In view of the tax savings, employees may be prepared to take a salary sacrifice, to obtain such vouchers, although if they are already claiming Tax Credits their claim may be reduced accordingly. It is important that any salary sacrifice is correctly documented, as this is a change to the employee's contractual rights.

### Example

An employee chooses to take £2,860 in child care vouchers instead of cash salary. They would save the following amounts in tax and National Insurance depending on whether they are a basic or higher rate tax payer and which would effectively represent an increase in their take home pay:

		Higher rate taxpayer	Basic rate taxpayer
Tax	£2,860 @ 40%/22%	£1,144	£629
National Insurance	£2,860 @ 1%/11%	£28	£315
<b>Total saving to employee</b>		<b>£1,172</b>	<b>£944</b>

The employer would also save Employers National Insurance of £2,860 @ 12.8% = £366

Voucher provider companies can operate the voucher scheme on behalf of employers, although they will

charge an administration fee. Alternatively, the employer can operate the scheme itself; provided the conditions for the tax and NIC exemption are satisfied and adequate records are kept. The Employers National Insurance saving from operating a salary sacrifice should pay for the administration of the scheme.

## Have you made a gift since 6 April 1998?

### What is POAT?

The 2004 Finance Act introduced pre-owned assets tax (POAT), primarily to catch those individuals who used various Inheritance Tax Avoidance schemes to remove the family home from their estate but continued to use the property.

### What does it tax?

The legislation applies to those who give away assets yet still derive a benefit from them and is effective for gifts made since 6 April 1998; however the first year for which a charge is applicable is 2005/06. One of the key points is that if the transfer has given rise to an Inheritance Tax charge or the transferor has elected to bear an Inheritance Tax charge on the asset, POAT will not apply.

There are other wide-ranging provisions which catch the use of gifts of cash and a subsequent purchase of an asset, which provides a benefit to the original donor.

### What is the tax charge?

There is a charge to income tax at the donors marginal rate, on the amount of the 'benefit' arising as a result of the donor being able to use or enjoy, either wholly or partly, the gifted assets. The basic charge varies depending on the nature of the asset given away and there are provisions for periodic revaluations of the benefit received.

Take the example of a house worth £500,000 which is gifted to a higher rate tax payer under an Inheritance Tax Avoidance Scheme in May 2000. The annual rent would be £20,000 per annum. The Income Tax liability each year would be £20,000 @ 40% = £8,000.

### What do I need to do?

If you have given away any asset (including cash) since 6 April 1998 and feel the above applies to you, please let us know by either telephoning us to discuss it, or by letting us have the relevant information.

**If you have any queries on any of the subjects covered in this newsletter or on any tax or company secretarial matters please email us at [taxteam@trevorjones.uk.com](mailto:taxteam@trevorjones.uk.com) or call our helpline on 0161 475 4700.**

**These articles are of a general nature and specific advice should be obtained before they are acted upon.**