

Stamp Duty Land Tax (SDLT) – The Basics

The past few years have seen numerous changes to the SDLT legislation in the UK. During the Covid-19 pandemic we enjoyed a number of 'Stamp Duty holidays', but, we have also seen the introduction of additional rates of SDLT and SDLT surcharges for certain purchasers.

SDLT only applies to acquisitions of real estate in England and Northern Ireland. There are different rules applying in Scotland and Wales which are not covered in this briefing note.

When does a charge to SDLT arise?

SDLT applies to land transactions, and is payable by the purchaser on a percentage of the 'chargeable consideration'.

'Chargeable consideration' is the amount given in money or money's worth. For the purposes of SDLT, the assumption of a debt is chargeable consideration. Therefore, if a property is gifted but the transferee takes over the mortgage on the property, the amount of the mortgage is the amount of the chargeable consideration.

The SDLT charge for a given land transaction will generally be calculated according to one or more of the six principle charging structures that we will cover in this article, which are:

- the standard residential SDLT rates;
- the higher 3% residential SDLT rates;
- the 2% non-resident surcharge SDLT rates;
- the first-time buyer residential SDLT rates;
- the higher 15% SDLT residential rate for non-natural persons (i.e. companies); and
- the standard non-residential SDLT rates.

There is also a separate structure covering SDLT chargeable on rent, which we have not covered in this briefing note.

When does a charge to SDLT not arise?

There are a number of exemptions from the charge to SDLT, the most common of which are:



Gift - A land transaction is not chargeable if there is no chargeable consideration. This means that SDLT is not charged on a gift of land or property. However, the assumption of a debt is chargeable consideration so a gift may give rise to an SDLT charge where the recipient takes on all or part of a mortgage. Furthermore, if a property is gifted to a company, the chargeable consideration is deemed to be the market value of the property.

Divorce or civil partnership dissolution - Exchanges of land made under a court order granting divorce, nullity of the marriage, or, judicial separation, are exempt from SDLT, with a similar exemption for civil partnerships.

Transfers on death – When land passes to personal representatives on the death of an individual or to a beneficiary under the terms of a will (or the law of intestacy), this is an exempt transaction.

However, SDLT is due if the personal representative/beneficiary gives any consideration on the transfer other than the assumption of a debt secured on the property or the agreement to pay any inheritance tax due.

SDLT Administration

An SDLT return must be delivered, and any SDLT paid, within 14 days of the effective date of the land transaction, which is usually the date of completion.

If the chargeable consideration is over £40,000, the transaction must be notified to HMRC on an SDLT return, even though no SDLT may be due.

Late payment of SDLT gives rise to an interest charge and penalties can be applied for late filing of an SDLT return.

Overview of the SDLT charging structures

The amount of SDLT due depends on the circumstances of the purchaser and the type of land purchased (residential or non-residential). Each transaction will be covered by one or more of the charging structures noted above.

Five of these charging structures relate to residential real estate and one to non-residential real estate. It is therefore important to understand what is classified as 'residential' and what is 'non-residential' under the SDLT legislation.

Residential real estate is defined as a building that is used as a dwelling, is suitable for use as a dwelling or is in the process of being constructed or adapted for use as a dwelling.



The definition includes land used as gardens or grounds, any structure on that land, and any land that subsists for the benefit of the dwelling, for example a separate garage. A dwelling also includes off-plan purchases of a dwelling.

In simple terms a dwelling is a 'home'.

Institutional accommodation buildings such as care homes, prisons, hotels, and student accommodation blocks, do not count as dwellings.

Non-residential real estate is anything that is not residential real estate. This includes mixed use property, for example, a building with a commercial space on the ground floor and residential accommodation above.

SDLT charging structures – Residential Real Estate

The current **standard rates** of SDLT for residential real estate have been in force since 22 September 2022. These rates of SDLT apply to consideration paid to purchase a freehold property and premiums paid to acquire a leasehold property, so long as the purchaser is not a first-time buyer (see below).

The **higher 3% rates** of SDLT apply on top of the standard rates of SDLT where either:

- the purchaser is an individual and the purchase is of an additional residential property. Note that when considering other properties, it is not only UK properties which are relevant; or
- the purchaser is either a company or a trust (other than a bare trust or interest in possession trust).

In the case of a joint purchase, if any of the purchasers already own or part-own residential property, then the transaction is a higher rate transaction for all the purchasers.

There is an exemption from the higher 3% rates for individual purchasers where the period of ownership of a main residence overlaps with the ownership of the additional residence. In this scenario, the higher 3% rate of SDLT is payable on the second purchase, but a later claim can be made for a refund of the higher rate if the previous main residence is sold within 36 months of the purchase of the new residential property.

Other exclusions also apply in relation to transactions surrounding divorce, and on inter-spousal transactions.

The **2% non-resident surcharge** rates have applied on top of both the standard rates of SDLT and the higher 3% rates of SDLT (where applicable) since April 2021. In simple terms this surcharge applies where the purchaser (or one of the purchasers) is not UK resident for the purposes of SDLT. These rules are not the same as the residency tests for other UK taxes. We have a separate article entitled *SDLT – Non-resident surcharge* which gives full details of how this charge applies and how to determine a purchasers residency.



These first three charging structures give us the rates of SDLT which will be applied to the amount of the chargeable consideration which falls into each band as set out in the table below:

Consideration	'Standard' SDLT rates		'Higher' SDLT rates	
	Resident	Non-resident	Resident	Non-resident
Up to £250,000	0%	2%	3%	5%
£250,001–£925,000	5%	7%	8%	10%
£925,001–£1.5m	10%	12%	13%	15%
£1.5m+	12%	14%	15%	17%

The **first-time buyer residential SDLT rates** apply to individual purchasers who are purchasing a residential property for the first time for use as their only or main residence for chargeable consideration of up to £625,000. Where the purchase is made jointly, all of the buyers must be first-time buyers. For purchases over £625,000, the standard residential SDLT rates apply.

Where the first-time buyer is non-resident, the 2% non-resident surcharge will apply.

Where the first-time buyer residential rates apply, the rate of SDLT is applied to the amount of the chargeable consideration which falls into each band as set out in the table below:

Consideration	First-time buyer SDLT rates	
	Resident	Non-resident
Up to £425,000	0%	2%
£425,001–£625,000	5%	7%

The **higher 15% SDLT residential rate** for non-natural persons applies at a flat rate on residential properties purchased for a consideration in excess of £500,000 by companies or partnerships involving companies. Where the company (or partnership) is non-resident for SDLT purposes, the 2% non-resident surcharge will also apply, giving rise to a flat rate of 17%.



Importantly, there is a relief from the 15% (or 17%) flat rate where the purchasing company is either acting as the trustee of a settlement, or where the property will be used for a property rental business; a property development business; occupation by employees; or public use. Where one of these exemptions apply, the higher 3% rates will apply to the purchase.

SDLT charging structure – Non-residential Real Estate

The SDLT charging structure for non-residential real estate is far simpler than those applying to residential real estate, in that there is only the one set of SDLT rates.

These rates of SDLT apply to consideration paid to purchase a freehold property and premiums paid to acquire a leasehold property (either a new or existing lease) and are applied to the amount of the chargeable consideration which falls into each band as set out in the table below:

Consideration	**SDLT rate**
Up to £150,000	0%
£150,001–£250,000	2%
Over £250,000	5%

There are no 'higher rates' and no 'non-resident surcharges' that apply to purchases of non-residential real estate.

How can Verfides help?

Our team of experts is ready to help you with:

- Preparing computations of the SDLT payable for a given real estate acquisition
- Identifying your residence status for SDLT purposes
- Advice on structuring the acquisition of real estate to minimise the SDLT payable
- All aspects of the taxation of UK real estate ownership, acquisition, disposal and succession planning

Please speak to your usual contact if you have any questions about Stamp Duty Land Tax or email tax_team@verfides.com .

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This document has been prepared as a general guide and is based on the latest legislation and guidelines. Whilst every care has been taken in its preparation, Verfides cannot accept any responsibility for any person relying on this publication. Professional advice should be obtained before undertaking transactions and Verfides will be pleased to provide such advice where appropriate.

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