

Number 15

Calculating Stamp Duty Land Tax On Leases

Introduction

On 1st December 2003 Stamp Duty Land Tax (“SDLT”) was introduced to replace Stamp Duty, pursuant to the Finance Act 2003 (“the Act”). The most notable definitions under the Act relating to leases are “chargeable transaction” “land transaction” and “acquisition of a chargeable interest”. The grant or surrender of a lease, the grant of an option or a variation of a lease, is an acquisition for the purposes of the Act and is a chargeable transaction subject to SDLT unless it is exempt from charge. The principal exemption is if there is no chargeable consideration.

Chargeable consideration is any consideration in money or monies worth including value added tax.

This bulletin concentrates on SDLT payable on the grant of a lease for a premium and/or rent and does not address lease variations, assignments, surrenders or options granted, transitional provisions nor reliefs available. SDLT is payable by the Tenant and the SDLT due on the premium and rent added together.

SDLT on Premiums

As with stamp duty, SDLT is payable on any lease premium at the same rates as before save for a higher nil rate band for non residential/mixed use of £150,000.

NB

- the treatment of “linked transactions”
- where the annual rent exceeds £600, the premium is charged at a minimum of 1%
- premiums do not attract the same concession as rents

SDLT on Rents

This is calculated as a percentage of the net present value (“NPV”) of rent payable over the lease term applying a discount of 3.5% per annum or such other rate as the Treasury may specify to take into account rent free periods.

SDLT is payable at a fixed 1% charge on the **excess** NPV over £60,000 for residential leases and £150,000 for non-residential/mixed use leases.

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The formula for calculation of NPV is as follows:-

$$\text{NPV} = \sum_{i=1}^n \frac{r_i}{(1+T)^i}$$

Where:

r_i	= rent payable
i	= the first, second, third, etc year of the term
n	= the term of the lease
T	= the temporal discount rate (3.5%)

A calculator is available on the Inland Revenue Website and the calculation can also be carried out on Microsoft Excel.

To ascertain the rent (and so the chargeable consideration) note the following:-

- Any VAT chargeable on rent is included in the consideration
- Where rent does not specifically apportion sums as to service charge and insurance, the total rent must be used
- No account is taken of any reverse premiums
- Obligations constituting services must be taken into account where they would affect the rent
- The carrying out of works by the tenant can in certain circumstances constitute chargeable consideration
- All rent changes after five years are ignored where there is certainty as to increases (e.g. stepped rent lease). However, at five yearly intervals thereafter a further return may be required by reference to the highest rent payable in any twelve month period within that five year period.
- SDLT on contingent rent is calculated by assuming that contingency has occurred
- In the case of uncertain or unascertained rent (other than by reason of rent review), it will be valued on the basis of a reasonable estimate of the aggregate rent payable for the lease term. Where rent is still uncertain after five years (e.g. turnover based lease or rent sharing lease) an additional return is required after five years calculating NPV on the actual rent paid in the first five years and assuming the rent payable for the remainder of the term is to be the highest rent paid in any twelve month period in the previous five years. As long as the rent subsequently payable does not rise by more than 5% of that highest rental figure (adjusted annually by the RPI Index) no further liability to SDLT arises. If the threshold is exceeded then there is deemed to be the grant of a new lease equal to the unexpired residue of the term and further SDLT payable.
- Where there is a rent review in the first two years of the lease term, this must be taken into account and valued on the basis of a reasonable estimate and a further return submitted once the reviewed rent has been agreed or determined. If the rent review is after the expiry of the first two years of the term, it can be disregarded.

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In determining the length of the lease term:-

- account has to be taken of whether there was an agreement for lease which was substantially performed prior to completion of the lease
- break clauses renewal clauses and forfeiture clauses are disregarded
- the extension of a lease will be treated as the grant of a new lease
- 1954 Act protected leases continuing beyond the contractual term will be deemed to be the grant of a new lease for a period of twelve months (or the original term of the previous lease if shorter)

N.B. These extensions will be treated as linked with the original grant and if they total seven years or more will be notifiable transactions.

Agreements for Lease and Substantial Performance

No SDLT arises upon the exchange of an agreement for lease but does arise when the agreement has been substantially performed. This is usually upon completion of the grant of the lease but can occur earlier by the Tenant:-

- taking possession of the premises (e.g. to commence fit out or pending superior landlord's consent, grant of a court order or any other reason)
- paying the first instalment of rent

Counterparts

Fixed duty is abolished on counterpart leases.

It should be noted that the above provides a very brief synopsis on the treatment of leases under the Act, and readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. The law in these notes is stated as at 31st January 2004.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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