

Number 12

Stamp Duty Land Tax

Stamp Duty Land Tax comes into force on 1st December 2003. This briefing note considers some of the principal differences between Stamp Duty and Stamp Duty Land Tax and the transitional provisions which will assist in determining which duty is to be paid.

PROPERTY

Differences between Stamp Duty and Stamp Duty Land Tax

Stamp Duty

- Voluntary
- Not a criminal offence and only penalty is financial
- No obligation on anyone to pay
- Chargeable on instruments
- Transfers of UK land must be stamped to be registered
- Stamp duty applies where there is a sale normally for a cash consideration, stocks or securities
- Instruments not relating to UK property or dealings do not need to be stamped if they have not been executed in the UK
- Only the last sale in a chain of sub-sales is subject to Stamp Duty
- Property swaps only stampable once on the higher value transaction
- Charged on VAT regardless of whether or not election to waive exemption
- Sanctions applied only if the document was presented for stamping

Stamp Duty Land Tax

- Mandatory
- Criminal and Civil penalty for non-compliance
- Obligation on the purchaser (as defined by the Finance Act 2003) to make the return and to pay the tax
- Chargeable on transactions
- Land transaction not to be registered unless application accompanied by certificate from the Inland Revenue or self certificate from purchaser
- Applies to any form of consideration
- Irrelevant where instrument executed, charge to SDLT arises if in respect of UK property
- Any transfer of rights is chargeable to SDLT and SDLT is payable for each sale (subject to sub-sale relief)
- Property swaps now classed as two separate transactions, both fully chargeable to SDLT (relief available for residential developers)
- Only charged on VAT if election made to waive exemption at the effective date
- Custodial sentences can be imposed for non-compliance

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Transitional Provisions

To determine whether a transaction is subject to Stamp Duty or Stamp Duty Land Tax please note:-

- Where a contract was entered into before 11th July 2003 and there has been no subsequent variation there is no SDLT even where completion occurs on or after 1st December 2003. Stamp Duty will be payable on completion.
- Where the contract was entered into and substantially performed before 11th July 2003 there is no SDLT even where completion occurs on or after 1st December 2003. Stamp Duty will be payable on completion.
- In the above example, if the contract is varied after 10th July 2003 there is no difference to the treatment of the transaction. It is still subject to Stamp Duty on completion.
- However, if in that example the purchaser enters into a sub-sale, SDLT will be chargeable on completion of that second contract if that occurs on or after 1st December 2003.
- Where the contract is entered into after 10th July 2003 but is completed before 1st December 2003 there is no SDLT.
- Where a contract is entered into after 10th July 2003 and is completed on or after 1st December 2003, SDLT will be payable, even where substantial performance has occurred before 1st December 2003. SDLT will be payable on completion of the contract.
- Where a contract is entered into after 10th July 2003 and substantial performance occurs on or after 1st December 2003 followed by completion SDLT will be payable on substantial performance.

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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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