

SDLT

not just a tax for purchasing property!

Stamp Duty Land Tax (SDLT) is a tax payable to HM Revenue and Customs (HMRC) for the acquisition of a relevant interest in land in England and Northern Ireland (the tax is different if the property or land is in Scotland or Wales), and most people will be familiar with the obligation to pay SDLT when purchasing a house or building. However, many tenants are surprised to find out that SDLT may also be payable when they enter into a lease of business premises or land in England.

SDLT is payable on the chargeable consideration provided for a land transaction by an acquiring party of a relevant interest in land. In the case of a grant of a lease, SDLT is therefore payable on any premium (i.e. the purchase price) payable to the Landlord and/or the total rent (inclusive of any VAT) payable over the term of the lease.

Calculating my SDLT

The amount of SDLT payable is calculated according to a mathematical formula to determine the net present value (NPV) of the full term rent, which is based on the rent for the first five years of a lease. There is a threshold of £150,000, below which no SDLT is payable, otherwise tax is payable at 1% of the NPV calculation exceeding £150,000.00 and 2% of the NPV calculation exceeding £5 million.

Depending on the level of rent and the term of the lease, the SDLT payable can be a substantial amount of money which is sometimes not considered by tenants when negotiating the head of terms for their lease. This additional financial cost should therefore be considered when agreeing the term of the lease and the level of rent to pay for premises, as the higher the rent and the longer the term, the more SDLT will be payable. HMRC have provided a useful calculator (please see link below) which you can use to work out the potential SDLT payable when negotiating the rent or chargeable interest against the lease term.

Stamp Duty Land Tax Calculator

SDLT requirements

What are the requirements in relation to payment of SDLT?

- Submission of a duly completed return; and
- Payment of tax due
- Both within the required period.

A Land Transaction Return must be submitted to HM Land Registry within 14 days of the effective transaction date. This could be within 14 days of completion of the lease or where an agreement for lease is substantially performed, whichever is earlier.

The SDLT due must also be paid to HMRC within 14 days of this date. You may be subject to penalties and interest if you do not file your Return within the required time and make your payment within 14 days of the effective transaction date. Failure to comply with SDLT requirements may also cause difficulties and delays in any future dealing of the lease.

Reliefs/exceptions

There are, however, certain reliefs that can be claimed against the obligation to pay SDLT and there are also certain exemptions and circumstances where no SDLT will be payable.

The acquisition of any of the following interests and transactions are not subject to SDLT and no Return will need to be submitted:

- a licence to occupy land;
- a tenancy at will; or
- a lease transaction where there is no or nil chargeable consideration or the lease premium is less than £40,000.00 and the annual rent is less than £1,000.

You may however still need to submit an SDLT Return, even if no SDLT is payable. For example, if a Lease is registrable at the Land Registry, having a term exceeding 7 years, but the NPV calculation of the rent is less than £150,000.00, such that no SDLT is payable, an SDLT Return is still required.

There are also a number of reliefs available which may mean that the lease transactions is either not subject to SDLT or SDLT is payable but at a reduced sum. e.g:

- Sale and Leaseback Relief – a sale and leaseback transaction (or a lease and leaseback transaction) may be exempt from SDLT if certain conditions are met;
- Overlap relief – a tenant may be entitled to overlap relief if the surrender of their existing lease is in consideration of the grant of a new lease between the same parties and the new lease is for the same premises;
- Group Relief – no SDLT charge arises on land transactions made between members of the same corporate group where certain conditions are met;
- Charities relief – charities can benefit from SDLT relief when leasing premises, provided that they intend to occupy the premises for qualifying charitable purposes; or
- Registered social landlords – certain land transactions entered into by a profit-making registered provider of social housing are exempt from paying SDLT if the transaction is funded with the assistance of a public subsidy and the relevant conditions are met.

There are many other situations where reliefs may be available, depending on how a transaction is structured or the elements involved in the transaction. A tenant should always seek the advice of a professional regarding its SDLT liability. Here at Moorcrofts, we can assist with this, or refer you to a relevant tax expert where the situation is more complicated. We can also assist with drafting the necessary Return and submitting the SDLT direct to HMRC on your behalf.

The above guidance is only an outline of how SDLT can apply to leases. The application of SDLT is wide ranging and complex and legal and tax advice should be sought. The SDLT Return is much like any other self-assessed transfer tax, so the tenant will need to review and approve the return to be submitted and seek the advice of an accountant or tax expert, if they have any queries in relation to the amount of SDLT due.

Moorcrofts' commercial property team provides legal advice to owners and occupiers of commercial property. We specialise in tenant representation and have extensive experience advising corporate occupiers on all aspects of leasehold acquisitions and disposals. If you would like legal assistance with your commercial property needs, please contact our Partner and Head of Commercial Property – Julia Ferguson.



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