

STAMP DUTY IN CONVEYANCING

WHY “STAMP DUTY LAND TAX”?

Stamp Duty is a tax, normally payable by purchasers or lessees of property. Payment is evidenced by a certificate from the Inland Revenue. The tax is payable when entering into a contract for the purchase or leasing of land. Usually it is paid on the Transfer or Lease, for the requirement that the tax be paid on the Contract may be waived, so allowing payment after completion of the transaction.

PURCHASES

From 1st December 2003 Stamp Duty land tax on the purchase of Freehold or Leasehold property is charged at the following rates: If the price does not exceed £125,000: Nil
over that, but up to £250,000 : 1%
over that, but up to £500,000 : 3%
prices over £500,000 : 4%
Duty is payable on the whole price, not just on the amount in excess of the bands shown.
Prices are rounded up to the nearest £100, and the duty payable is rounded up to the nearest £5.

RESPONSIBILITY

It is a legal requirement that Stamp Duty Land Tax Return is signed by the Purchaser declaring that the return is to the best of his/her knowledge correct and complete. It is the Purchaser's responsibility to pay the tax due.

SUB-PURCHASES

It sometimes happens that a buyer of property promptly re-sells that property. Provided the original seller transfers the property direct to the sub-purchaser only one payment of Stamp Duty Land Tax is due. The duty will be paid by the sub-purchaser. The intermediate buyer will not be liable to any duty.

EXCHANGES

If a Purchaser and Seller are exchanging land there are in effect 2 separate transactions each of must be notified to the Inland Revenue and tax paid on the market value of the land acquired. There is certain relief available if the Seller is a house building company which is taking the purchaser's house in part consideration for the sale.

NEW LEASES

On entering into a new residential or commercial lease Stamp Duty Land Tax is paid at 1% of the net present value in excess of the appropriate threshold. The thresholds are £125,000 for a residential Lease and £150,000 for a commercial Lease. Duty for premiums paid is the same as Transfers of land generally. In designated disadvantaged areas there will be no tax on commercial Leases and residential Leases will benefit from £150,000 exemption. A fixed duty of £5 is no longer payable on duplicate or counterpart documents held by the Landlord. The responsibility for paying Stamp Duty Land Tax and the responsibility for completing the Stamp Duty Land Tax return is the Tenants. Certain Leases will need to be notified to the Inland Revenue by completing a Stamp Duty Land Tax return form. These are Leases for seven years or more further or not they are exempt or chargeable. The Leases for seven years or less but there is a Stamp Duty Land Tax charge on the premium and on the rent Stamp Duty Land Tax is paid at 1% or more, in some cases relief is available from paying Stamp Duty Land Tax.

VAT

Prices and rents must be calculated inclusive of VAT, even though this leads to a tax on a tax. For example: if the price is £120,000 no Stamp Duty is payable; when VAT is payable (e.g. on commercial property) that price rises to £70,500, on which £705 is payable.

CHATTELS

If included in the price of the property there are chattels which can pass by delivery, i.e. not fixtures and fittings which form part of the property, you are entitled to pay a separate price for those chattels, and that does not attract Stamp Duty. By so doing you may well be able to bring the price of the property down into a lower band, or avoid Stamp Duty altogether if the price is thereby reduced to no more than £120,000.

Please do not pay more for those chattels than they are worth as that may lead to a prosecution for cheating the Public Revenue.

BREAK-DOWNS

Each document transferring property worth

under £500,000 has to include a certificate to the effect that the document does not form part of a larger transaction or of a series of transactions. This prevents the avoidance of Stamp Duty by artificially breaking a transaction down into parts, each liable to a lesser or no payment.

REPORTS

On completing every purchase, or lease of 7 years or more, the buyers or tenants must submit a Stamp Duty Land Tax form to the Inland Revenue. The Inland Revenue will keep a detailed record of all properties in the area and if they believe that a matter needs to be investigated because something is not quite right and they may well call for the contract and other papers relating to the transaction. From 1st December 2003 the Inland Revenue do have tougher anti avoidance measures and enforcement powers.

PENALTIES

Technically, the Stamp Duty Land Tax is payable on the transaction and

before entering into the transfer document or lease. It must be paid within 30 days or the effective date, usually the completion date, this is known as the filing date. If the Stamp Duty Land Tax is not paid within the 30-day period penalties can be sought by the Inland Revenue. These can be very heavy. Penalties will be incurred if the Stamp duty Land Tax return is filed late. There is a fixed penalty of £100 if the return is filed within three months after the date due and £200 in any other case regardless of whether any tax is payable. In addition a tax related penalty will be due if there is a failure to file the return within 12 months. The new system is basically a self assessment and no documents have to be submitted to the Inland Revenue, the tax is on the transaction. The Inland Revenue have nine months from the submission of the return to raise any enquiries and can ask for documentation to be supplied at this stage.

SANCTIONS

As a further inducement to payment, HM Land Registry will not register your title to the property you have purchased or leased until the Inland Revenue Stamp Duty Land Tax certificate has been submitted.

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EXEMPTIONS

A document transferring property other than on a purchase is usually liable to a fixed Duty of £5. However, there are many exemptions covering such transfers as those between trustees of a trust, to beneficiaries of an estate, in consideration of a marriage, in connection with a divorce, on properties if residential under £150,000 in deprived areas designated by the Inland Revenue, or as a gift or other voluntary transfer for no consideration. No Stamp Duty is payable by a Charity, whatever the purchase price.