

Property Tax

This firm is not authorised to give tax advice but we can assist you in limited circumstances such as completing a Stamp Duty Land Tax return on your behalf. We will only deal with matters which directly affect the transaction you have asked us to undertake.

It is for you to specifically make us aware of your tax position and all circumstances that could lead to a tax liability, where this may affect our legal advice. Do not assume that we are dealing with any matters which we have not brought to your attention.

In some circumstances there may be tax issues relating to your transaction which you need to deal with yourself. In complicated cases we may need to refer you to take specialist tax advice from an Independent Financial Advisor or Accountant.

This note is designed to provide basic guidance on types of tax relating to properties and when they may be payable. It is not an exhaustive list and full and proper advice must be taken on your particular circumstances. Rules and reliefs can change from time to time.

If you have any questions about any of the matters raised in this leaflet or you believe that the circumstances may apply to you, it is up to you to let the Fee Earner acting for you know as soon as possible.

Index

1. Property Purchases:

Stamp Duty Land Tax

- Additional Rate of Stamp Duty Land Tax
- First Time Buyer Relief
- Mixed Use/Commercial Properties
- Leases
- Other reliefs from SDLT

VAT

2. Property Sales

- Capital Gains Tax
- Inheritance tax
- Reclaiming additional rate of SDLT paid

3. Gifts

- Capital Gains Tax
- Inheritance tax

1. Property Purchases

Stamp Duty Land Tax ('SDLT')

This is payable in respect of the acquisition of a 'major interest' in land. Amongst other things, it relates to:

- a. The purchase of a legal interest (ie ownership) to a property;
- b. The purchase of a share (or further) in a property;
- c. Taking a share (or further share) in a property by paying a mortgage or debt on behalf of someone else;
- d. Taking a lease of a property

A Stamp Duty Land Tax return must be made for all transactions with a consideration of over £40,000, whether or not there is any tax payable.

You cannot become the registered owner of a property until a Certificate is obtained from HMRC.

Additional Rate of Tax

In April 2017 the government introduced an 'Additional Rate' of SDLT for property transactions. If you or your spouse owns a major interest in a property or land at the date of completion of your purchase you will be liable to pay a further SDLT levy of 3% of the total purchase price. The rules are complex and the rate often applies when clients think it should not.

If you are liable to the additional rate and subsequently sell your prior main residence within 36 months of completion of your purchase, you can reclaim the additional tax paid from HMRC. A form will need to be submitted within 3 months of the sale or 12 months of the SDLT return, whichever is later.

First Time Buyer Relief

In the Budget on 22 November 2017, the Chancellor of the Exchequer announced a relief from SDLT for first time buyers. The relief applies to purchases of residential property for £500,000 or less, provided the purchaser intends to occupy the property as their only or main residence. It doesn't apply to commercial or mixed use properties.

First time buyers purchasing their first home for £300,000 or less will pay no SDLT. Where the purchase price is over £300,000 but does not exceed £500,000 they will pay 5% on the amount above £300,000. The relief applies to purchases in England, Wales and Northern Ireland. In Wales, it will apply until Land Transactions Tax replaces SDLT for transactions in Wales from 1 April 2018.

If you are buying a shared ownership property, you can only claim the relief if a market value election is made on completion of your purchase.

Mixed Use/Commercial Properties

These are liable to taxation at a different rate to residential properties. No tax is paid up to £150,000 but as with residential properties, a return must be made for purchases worth over £40,000.

Leases

The following comments apply generally to leasehold properties, either residential, mixed-use or commercial, although the rates will differ.

Calculating SDLT on leases is more complicated than freehold purchases. The ascertainable rent payable for the first five years is taken into account. From this the net present value is calculated and tax is payable on both the premium and the net present value.

If the rent changes in the future (e.g. upon a rent review) a new return may need to be made. Similarly, another return may need to be made if the lease is surrendered or extended with or without a new lease being granted.

For Shared ownership leasehold properties, SDLT is not normally payable until you acquire over 80% of the property from your housing association. However, when you first buy a share in a property you have the opportunity to make a 'Market Value Election' which means that you can pay all of the SDLT for the full purchase price at that date. If you do this, there will be no tax to pay in the future. If you don't, then the future shares you acquire need to be valued each time and when you own over 80% there will be a tax liability at the then current rates. It is therefore important to consider whether a Market Value Election can be made when you first buy a shared ownership property without any SDLT payment being necessary at the outset and for you to keep a record of this or for it to be mentioned in the lease.

VAT

This may be payable on Commercial Property transactions where the seller has elected to charge VAT for the property. It is not payable where the transaction is treated as a Transfer of a Going concern ('TOGC'). The current rate is 20%.

Stamp Duty Land Tax is payable on top of the amount of VAT paid, as well as any premium paid for the property. You can recover the VAT if you are VAT registered.

Other reliefs from SDLT

There are a number of reliefs from SDLT. For example:

- a. Transactions pursuant to a divorce will not be liable to SDLT.
- b. Multiple Dwellings Relief – if you are buying two or more separately habitable dwellings at the same time (eg an annex or coach house either attached to or separate from the main house).
- c. Disadvantaged area relief.

2. Property Sales

Capital Gains Tax (CGT)

If you sell a property which you have not lived in as your main residence for any period of time, you may be liable to pay tax on the increase in value.

Each person has an annual allowance for CGT, currently £11,300 for the tax year to April 2018. If a property is owned by more than one person (either legally or beneficially) each may set their allowances the gain on disposal. A sale or a gift of the property will give rise to the liability. In the case of a gift, you will need to determine the value of the gift at the time of acquisition and disposal and a surveyor's (or Estate Agent's) valuation may be required.

The tax rate for CGT for residential properties is 18% or 28% depending on your circumstances. The rates for non-domestic properties are 10% and 20%.

Sometimes the Capital Gain can be 'Rolled Over' so that it is payable when there is a further sale.

Normally a Capital Gain must be notified on your self-assessment tax return. For property owned by people living overseas a notification must be made to HMRC within 30 days of the disposal and there is no relief from CGT for chargeable gains from the 6th April 2015.

This is a self-assessment tax and we do not advise upon it nor complete tax returns on behalf of clients – this is the job of an accountant.

Inheritance tax (IHT)

If you sell a property as executor for someone who has died, there may be Inheritance Tax to pay in respect of the deceased's estate.

There are complicated rules which can raise the tax-exempt threshold (known as the 'Nil-rate band') for those leaving properties to children (natural or adopted) or lineal descendants. Currently (tax year 2017/18) IHT is payable at a rate of 40% for assets in a deceased estate over £325,000 owned by an unmarried individual or £650,000 between spouses/civil partners. If you qualify for the residence allowance, the threshold increases by £100,000 for individuals or double this for spouses/civil partners in 2017/18 but increases to £125, £150k and £175k (once again doubled in the cases of spouses/civil partners) in the subsequent three tax years. After 2020 this sum is set to increase in line with the Consumer Prices Index. The allowance is only in respect of the value of your main residence at death although there are provisions giving further tax savings if you have sold a property and downsized. The rules for IHT and the residence allowance are complex and our Wills and Probate team can assist in drafting a will in the correct manner for you to benefit from any possible tax saving in this regard.

Reclaiming tax paid at the additional rate

As mentioned above, if you had to pay the additional rate of tax when you purchased a second property you can reclaim the tax paid if you sell your previous residence within 36 months, so long as the forms are submitted to HMRC within the relevant time limits. We can assist in preparing and submitting this to HMRC for you.

3. **Gifts**

There can be tax consequences of giving things away.

CGT

Any part of a property/land which you give away or sell without receiving payment of its full value is treated as a disposal at its full value (see 2. Property Sales above). The difference will be deemed a gift to the receiver – see below.

You are advised to seek a surveyor's valuation and advice on any CGT liability before making a gift.

IHT

The value of any gifts made in the last seven years of your life will be added to your estate when calculating any IHT payable on your death. If you have made gifts within the 7 year period, it may be necessary to look back a further period to calculate IHT.

Last updated 11.01.2018 AJC