



LAYTONS^{LLP}

SDLT & ATED

Update

March 2018

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This update comments on the latest developments on the following:

- First time buyer's relief (FTB)
- Higher rates (or 3% surcharge) for additional dwellings (HRAD)
- SDLT Manual updated to incorporate guidance on HRAD
- Technical queries submitted to Stamp Office
- What is a "major interest"?
- Errors in SDLT returns
- Proposed shortening of time limit for filing SDLT returns to 14 days
- Additional information schedules to SDLT1
- Determining the rate of SDLT chargeable on purchases of residential property
- Welsh Land transaction tax
- Project Blue
- ATED



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First time buyer's relief (FTB)

FTB was introduced on 22nd November 2017 and the HMRC online SDLT calculator has been updated to calculate the SDLT charge where the relief is claimed. The online calculator now includes an additional question as to whether the buyer has ever owned or part owned another property.

Higher rates (or 3% surcharge) for additional dwellings (HRAD)

There are some detailed amendments to the HRAD legislation proposed on Schedule 11 to Finance (No 2) Bill 2017-19 which will apply to transfers between spouses, property adjustment on divorce or dissolution of civil partnerships, trustees acquiring property under a Court of Protection Order and lease extensions. These amendments, assuming that they are enacted, will have effect from 22nd November 2017. As always, it is important that anyone affected by or relying on these amendments consults the proposed new rules in [Schedule 11 to the Finance Bill, a copy of which is available here](#) together with [explanatory notes which are available here](#). The conditions for avoiding the HRAD charge on lease extensions are particularly restrictive.

SDLT Manual updated to incorporate guidance on HRAD

[The SDLT manual has now been updated to incorporate the HRAD content previously published in a PDF and updated for the changes made on 22 November 2017.](#)

Technical queries submitted to Stamp Office

The Stamp Office receives hundreds of requests for advice and clearances every month and is currently responding to these within the 28 day policy deadline. However, a high proportion of these requests relate to FTB and HRAD and the vast majority of these can be answered by reading HMRC's published guidance notes, which include many examples. The [guidance note for FTB is available here](#) and [HRAD is available here](#).

What is a "major interest"?

I have commented previously on whether an undivided share in a freehold or leasehold property could count as a major interest for the purpose of HRAD and the same issue arises for FTB. There is a credible argument that an undivided share should not count as a major interest for the purpose of both FTB and HRAD, although it is important to note that HMRC are firmly of the view that an undivided share can constitute a major interest for the purpose of these provisions, and HMRC's view on this point is confirmed in their detailed guidance notes on HRAD and on FTB. In my previous Update I mentioned that HMRC are seeking legal advice on this point and this advice is still awaited. Clearly, the most effective way of resolving potential disputes on this point would be to amend the legislation so as to put the matter beyond doubt.

Errors in SDLT returns

HMRC has stated that the error rate in SDLT returns is still high. Common errors include inserting the wrong buyer's name and using the wrong code (note, in particular, that code "04" should be used where HRAD applies). The position is not helped with lack of guidance for completing online returns, although there is detailed guidance for completing a paper return.

Proposed shortening of time limit for filing SDLT returns to 14 days:

With effect from April 2019, it is expected that the filing date for SDLT returns will be shortened to 14 days (instead of the current time limit of 30 days) after the effective date of the transaction.

Additional information schedules to SDLT1

Para 62047 of the SDLT Manual states that additional schedules detailing leases or tenancies to which the property acquired is subject should be completed and submitted to the Stamp Office where the transaction notified on the SDLT1 is subject to more than one lease or tenancy. There are two schedules, one for use in the case of residential property, the other for nonresidential or mixed use property. These forms, which are forwarded by the Stamp Office to the VOA, do not affect the SDLT chargeable and can be burdensome to complete. There is doubt as to whether there is a statutory obligation to complete these additional forms. The VOA is currently reviewing its policy for requiring completion of these forms.

Determining the rate of SDLT chargeable on purchases of residential property

Determining the rate of SDLT chargeable on purchases of residential property can be a complex exercise, especially now that we have four sets of SDLT rates which can apply to purchases of residential property (the standard residential rate, HRAD, "mixed" or non-residential rates and the 15% nonnatural persons' rate). [We have prepared a questionnaire for use by clients and their advisers to assist in determining](#)

[the rate of SDLT chargeable which is available here](#). This is intended identify transactions on which specific advice on SDLT may be required, eg where the client is buying two or more residential properties, rather than providing all the answers.

Welsh Land transaction tax

With effect from 1st April 2018, purchasers of properties in Wales will be subject to Welsh land transaction tax instead of SDLT. SDLT will be switched off for purchases of properties in Wales with effect from that date. It is now possible for advisers and their clients to register online for LTT returns.

Project Blue

The Supreme Court heard HMRC's appeal at the end of February 2018 but the appeal hearing was adjourned pending a further submissions which are intended to analyse the identity of the purchaser in transactions where property is acquired with the aid of a mortgage, whether the mortgage is conventional or Sharia compliant. A further Bulletin will be circulated as and when the Supreme Court publishes its decision.

ATED

A reminder that the new ATED year commences on 1st April 2018 and ATED returns, including relief declaration returns, should be filed by 30th April. Clients and advisers who have not registered under the new digital filing system should do so as soon as possible, since the existing online system for filing ATED returns will close on 31st March 2018.

Tax

We recognise that the tax-planning environment has changed radically over recent years and that there is now far greater statutory regulation and control over perceived, as well as actual, tax avoidance.

Tax advisers must now understand and advise on increasingly complex anti-avoidance rules, including the new rules which allow the UK tax authority to demand up-front payment of disputed tax where they are challenging a scheme. We strive to achieve what is practical and possible and draw attention to the real risks.

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