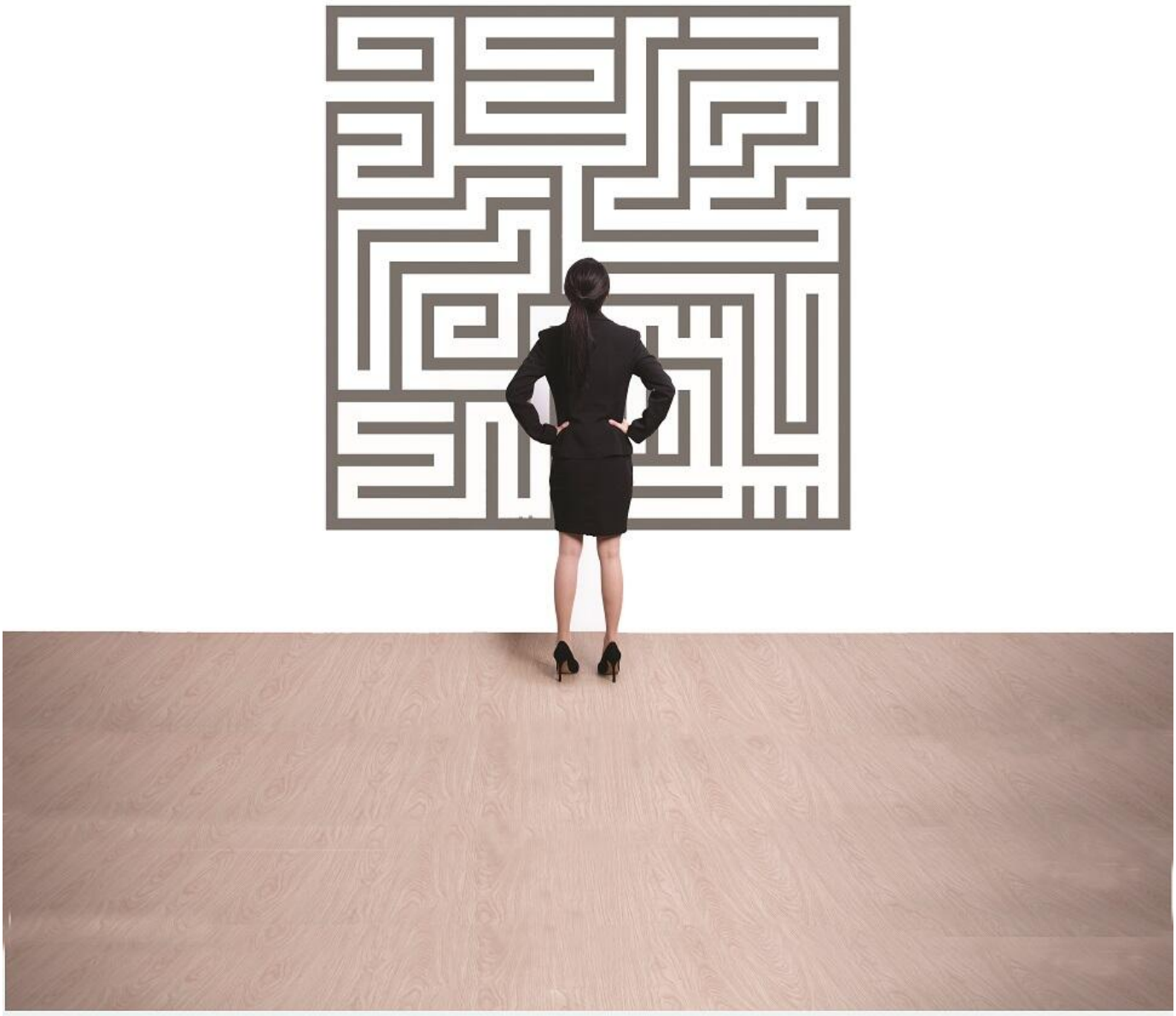
# Where are we now?

Indirect Tax



01 August 2019

SDLT has become increasingly complex. *Jo White* provides an overview of the rules.

## Key Points

## What is the issue?

The rules on what level of Stamp Duty Land Tax (SDLT) is payable have become increasingly more complex. What was once seen as a relatively straightforward tax to calculate now means that different people could pay different SDLT charges on the same transaction.

## What does it mean to me?

With the introduction of Scottish Land and Buildings Transaction Tax (LBTT) and the Welsh Land Transaction Tax (LTT) depending on where the land transaction takes place you could be under one of three different sets of rules within the UK.

## What can I take away?

This first article in a series provides an overview of the rules.

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My comments focus on the rules fundamental to property transactions in England and Northern Ireland. This article discusses the basic fundamentals of SDLT. In my next article, I will consider the main considerations for individual purchasers.

The comments across both articles are by no means the whole picture but give a flavour of some of the more ‘typical’ transactions I come across. The two articles do not detail any partnership transactions nor rules specific to corporate purchasers which have their own rules and need to be considered carefully. Nor do they cover leases.

## Basic fundamentals of SDLT

## Chargeable interest

A chargeable interest is defined within Finance Act 2003 s 48. It means:

a. An estate, interest, right or power in or over land in England or Northern Ireland; or
b. The benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power

other than an exempt interest.

An exempt interest is any security interest (i.e. a mortgage), a licence to use or occupy land, a tenancy at will, an advowson (right to appoint a clergyman or vicar), franchise or manor.

A right over land can include an option (FA 2003 s 46 explains this further) and overage therefore it is not just the 'normal' sale of the land itself or long leases.

## Residential property

Residential property is defined within FA 2003 s 116 as:

1. A building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use; and
2. The land that forms part of the garden or grounds of such a building; or
3. An interest in or right over land that subsists for the benefit of a building within (1) and (2) above.

The tests within the legislation refer to actual and suitability for use. The use for which the purchaser intends to apply after the transaction date is almost always irrelevant.

Gardens and grounds are residential property. Whilst it is easy to identify the garden, it is often harder to identify the grounds. HM Revenue & Customs guidance states that: 'Garden or grounds' includes land *which is needed* (my emphasis) for the reasonable enjoyment of the dwelling, having regard to the size and nature of the dwelling. This is usually a question of fact depending on the individual circumstances of the case. [SDLTM30030]

HMRC have confirmed their view on the position where the garden is sold separately. They have confirmed that the land, which was part of a residential property, remains that way even if it is sold separately. They have further confirmed that if at the effective date there is no longer a building as defined under Finance Act 2003 s 116(1)(a) as it is derelict or demolished then those grounds/ gardens are no longer residential.

**Non-residential property**

This is also defined within the same part and means any property which is not residential property. Non-residential property also includes a transaction where six or more separate dwellings that are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over them. HMRC have confirmed that providing they are under a single contract, even if there are different completion dates, these rules could apply.

This is especially important in the cases of multiple purchases and indeed more recently property portfolio incorporations where Finance Act 2003 Schedule 15 detailing the partnership provisions cannot be applied.

## Consideration

SDLT is calculated on chargeable consideration. Chargeable consideration for this purpose is set out in FA 2003 Schedule 4.

Chargeable consideration, except where expressly provided, is any consideration in money or money's worth given for the transaction. This can be either directly or indirectly by the purchaser or a person connected with him [Finance Act 2003 Schedule 4 para 1]. For circumstances where non-monetary consideration is applied, the value for this is its deemed market value.

There are a number of issues that need to be assessed when determining the level of consideration for SDLT purposes. Special rules apply in circumstances including, but not limited to:

1. Where a repayment or assignment of debt forms part of the transaction [Finance Act 2003 Schedule 4 para 8]
2. In the event of contingent consideration [FA 2003 s 51]

3. Where the purchaser is a company and the vendor is connected with them –deemed market value [FA 2003 s 53]

**Linked transactions (FA 2003 s 108)**

Transactions are linked for the purpose of SDLT where they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or persons connected with them.

Connection for this purpose is defined in Corporation Tax Act 2010 s 1122.

Where transactions are linked the total aggregate consideration is calculated to work out any SDLT payable.

HMRC will seek to apply these rules in a wide-reaching manor. There is no time limit for these rules to apply and therefore strictly speaking a transaction between the same vendor and purchaser could be linked even if they had taken place, say, 20 years apart.

The key here is to consider whether or not the transactions would have taken place independently of each other? Linked transactions are more likely to apply if there has been a discount applied to the purchase of one property due to the acquisition of the second or the properties could only be purchased as one.

HMRC had previously included in their SDLT manuals this fact. This comment has now been deleted from their manuals but emphasises a once public view from them on this situation.

The subject of linked transactions also comes up when considering properties acquired at auction. Again, these are not necessarily linked where the lots were bid on completely independently of each other which is often the case.

It is very important that any potential linked transactions are reviewed before automatically assuming that the chargeable consideration should be aggregated.

**Due date for payment**

SDLT is payable within 14 days from the effective date of transaction. This reduced from 30 days with effect from of 1 March 2019. ‘Effective date’ is when the contract is substantially performed. In most cases this is completion, however this is not

always the case. ‘Substantially performed’ is defined in Finance Act 2003 s 44(5). Including:

- The purchaser (or a person connected with the) takes possession of the whole, or substantially the whole, of the subject-matter of the contract, or
- A substantial amount of consideration is paid or provided.

HMRC confirm ‘substantially’ means 90%.

Things to note here are as follows; possession can include the receipts of rents or profits or rights to receive them (s 44(6)).

In circumstances where the vendor allows the purchaser to access the land this could also bring forward the effective date. A contract must exist for the effective date to be earlier than completion. Allowing someone to occupy a property prior to completion but where there is no contract does not mean the effective date has been brought forwards.

**Example**

***An example of the transaction where consideration is not wholly money***

An individual acquires a plot of land from their neighbour. They agree to pay £100,000 plus pay for the costs of the land transaction. Consideration for this purpose is £100,000 plus the market value of the costs incurred by the purchaser.

## Exempt transactions

Finance Act 2003 Schedule 3 includes a specific list of exempt transactions. Some of the more common ones are:

- no chargeable consideration (except for cases where FA 2003 s 53 applies);
- transactions in connection with divorce;
- assents and appropriations by personal representatives; and
- variation of testamentary dispositions.

It is normally pretty clear whether or not SDLT is expected to be payable on a transaction. It is however always worth checking that the exemptions cannot be applied.

In my next article I will consider how these basic principles apply to property purchases by individuals.

*This article refers to HMRC's earlier guidance in the SDLT manual on 'garden and grounds' that is no longer current HMRC guidance. HMRC published new guidance on 25 June 2019 at SDLTM00440 et seq. (Jo's next article will consider the new guidance.)*