

GUIDANCE NOTE and other information on changes to STAMP DUTY (LAND TAX), affecting short term tenancies and leases, as from 1st December 2003, amended 26th March 2006.

These guidance notes have been prepared by ARLA with the help and co-operation of the Inland Revenue and whilst believed to be accurate it is up to any person or company etc, when taking a lease or tenancy that may have some liability for SDLT, to take their own formal advice.

From 1st December 2003 the way that Stamp Duty, to be known as Stamp Duty Land Tax [SDLT], is calculated on short term (up to seven years) residential leases/tenancies has changed. These changes mean that the vast majority of such tenancy agreements/leases will not be liable for duty [SDLT] to be paid upon them.

The core change is the threshold (of rental income under a tenancy or lease) over which SDLT becomes due and the method of calculating that threshold – based on a computation of what is known as Net Present Value [NPV] which includes using a discount % (the Temporal Discount Rate) set out in the Finance Act. From 26th March 2006 this threshold was increased to £125,000. If the NPV computation provides a figure in excess of £125,000 then SDLT is due to be paid based upon 1% of the difference between £125,000 and the NPV amount. Where the NPV amount is less than £125,000 then no SDLT is due. *{There are different arrangements for “Premium Leases” and the calculation of SDLT on these is explained at the end of this note.}*

General Notes, Comments and Guidance

- The liability for paying any Duty due, and for completing and submitting the relevant declaration Form (SDLT1 and SDLT4) to the Inland Revenue will be the Tenants - as that is the person to whom the lease/tenancy is granted. (This is equivalent to the purchaser being liable to pay stamp duty when they buy a property.) Neither a landlord nor an Agent has a liability for SDLT or for submitting the declaration forms.
- Where there is more than one tenant named they are jointly liable to pay any Duty that is due but one on behalf of all, may discharge this liability although they must all sign the Form sent to the Revenue.
- It makes no difference that the tenant is not a person, but instead a registered Company, or a Trust or a Partnership; the tenant, whosoever that may be is liable where SDLT is due.
- The declaration Form must be sent to the Revenue within the 30 days of the “effective date” of the transaction – so that could be the date the lease/tenancy is executed or the commencement date, whichever is the earlier. There are fines and possible penalties if the declaration form is submitted late by three or more months.
- For the purposes of the calculation of NPV the rent due in each year is treated as a separate period. It doesn’t matter whether the tenancy agreement states the initial fixed term in years, months, weeks or as from X date to Y date – the rent is divided up into what’s due in each year, or part year and the NPV calculation is then applied to that series of amounts. So, for example, rent due for a 9 month fixed term tenancy is the amount due in Year 1 – it is not “annualized” or multiplied up to equate to a year.
- Where a fixed term tenancy subsequently “rolls over” or “holds over” as a periodic tenancy following the end of the fixed term - the liability for SDLT must be recalculated (at the time it goes periodic) based on the presumption that the tenancy will continue for a further 12 months. If this presumption would create (or increase) a liability for SDLT using the standard calculation tool, the tenants must complete an appropriate return and make the payment to the Revenue. This process and calculation is then repeated if the tenants stay on (under a periodic) after the end of that 12-month period.
- Initial periodic tenancies or those of an indefinite term: - For example, an assured shorthold is created from commencement as a periodic tenancy (rather than as an initial fixed term), for the purposes of calculating SDLT this will be presumed to be a 12-month tenancy and the relevant calculation will need to be done to identify any liability for SDLT. If the tenant is still in occupation at the end of this nominal 12-month period, the presumption, process and calculation is repeated – taking account of the period already elapsed.
- Where successive fixed term tenancies are granted which are in effect a “device” to minimize SDLT they will be treated as “linked transactions” and the relevant amounts entered into the standard calculator tool to establish any liability for SDLT. However, where as a matter of genuine circumstances successive fixed term tenancies are granted after the normal negotiation that would apply to a new tenant, it is not the intention of the legislation to treat these as “linked transactions”.
- It makes no difference to the calculations whether the property is furnished or part or unfurnished.
- The existing differential on the calculation of two amounts of Duty relative to a “Counterpart” or “Original” tenancy agreement will no longer apply – it’s a single tax, payable (where due) on the transaction, by the tenant.

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- It doesn't matter whether the tenancy agreement/lease is an assured, shorthold, non-housing act, company let, premium lease – they are all included.
- The calculation is on the rent due under each year (or part year) of the initial fixed term - irrespective of any notice period requirements, which might be built into the tenancy agreement.
- It is irrelevant if there is a break clause in the tenancy - the calculation of the NPV, and thus any liability for duty, is based upon the rent due under each year (or part year) of the initial fixed term. The fact that a break clause might end the tenancy early is irrelevant and would not provide any entitlement to a refund.
- No refund or re-imburement would be made of valid duty paid in the event of the tenancy terminating early, for whatever reason.
- What about a tenant's Option to Renew clause? Does that affect the calculation of NPV?

It can do - the tenant does not take account of the option in the original NPV calculation. If, however, the option is subsequently exercised this is considered as a “linked transaction”; the two NPV's of the two transactions are worked out separately and added together and, if over the threshold, duty is payable.

- How do Rent Review/Increase clauses affect the calculation?

Where there is a fixed, specific or minimum amount of increase (e.g. 4%) written into the agreement then you take this into account when calculating the rent due in subsequent year(s) for NPV purposes. Note however, if the rent increase is expressed as linked to the RPI e.g. 2% over the RPI, you just use the 2% figure and do not take account of the (unknown) RPI.

Where the rent review clause is not specific about how the calculation will be made, this is classed as “uncertain or unascertained consideration” and, a reasonable pre-estimate is required to be made and this would be used in the calculation of NPV. When, in due course, the actual amount becomes known, the tenant would either be liable for any further duty if not enough had been paid, or, a claim may be made for a refund or re-imburement of overpaid SDLT based on an erroneous calculation.

- What about “Inclusive” rents – e.g. the rent also covers Water, or Gas, or Electrics? This only makes a difference to the calculation if, in the “Inclusive” case the contract specifies an amount of the rent for the other things – subject to the caveat that the apportionment must be just and reasonable.
- The calculation is based upon rent due in any one year – so the old phrase “a year less a day” seen in quite a few tenancy agreements to minimise the amount of stamp duty paid by a tenant will, in future, be obsolete as it makes absolutely no difference to the liability to pay duty. The calculation considers any period in a year for which rent is not paid as “rent free” for the purposes of calculation.
- So, for example, the NPV figure comes out at say £128,000. That's £3,000 over the £125,000 threshold so at 1% of the amount over the threshold that means the SDLT due is £30? Correct.
- If a tenancy, which was originally created under the old regime, is renewed or extended for a further fixed term after the 1st December 2003, the new regime will apply to that fixed term extension as will the new threshold after 26th March 2006.

Q. So, how will people work it out!

A. You can set up a basic version of the calculator in Microsoft Excel on your PC; how to do this is explained in some detail, plus example calculations in the “ARLA CALCULATOR TOOL on SDLT” note which is available to be viewed or downloaded via the www.arla.co.uk website. The Inland Revenue will provide a more sophisticated “Calculator Tool” and more information about SDLT on their website (www.hmrc.gov.uk).

PREMIUM LEASES - are treated a little differently in the way that payable duty is calculated. There is no allowance for, or computation of, NPV of rent when calculating the amount of duty payable under a Premium lease; instead, the total premium is considered as the single “relevant consideration” under the same main charge scale table as used for the sale (price) of a property – and so those relevant SDLT % rates apply.