

Pitt Jackson Solicitors

LEGAL MEMORANDUM

To : Pitt Jackson
From : Trainee
Date : 3th December 2021
Client : Prince Williams
Issue : Stamp Duty Land Tax

Thank you for your note of November 29, 2021, instructing me to conduct study on the subject. DLT (Stamp Duty Land Tax) has been replaced with Land and Buildings Transaction Tax in Scotland, however SDLT still applies in Wales. However, Wales is expected to have devolved control in the area of SDLT by April 2018.

I looked up the current SDLT thresholds and rates in the Finance Act of 2003. (Part 4, s55). If the relevant consideration is less than £125,000, no tax is due; however, if the relevant consideration is more than £125,000 (but less than £250,000), a tax of one percent is due. SDLT is charged on the total amount of the relevant consideration, not simply the portion that exceeds the threshold. As a result, a purchase price of £127,000 would result in £1,270 in SDLT, whilst a purchase price of £125,000 would result in £0.

To begin with, you said that the property is residential in your memorandum. Is the property only for residential use? Non-residential or mixed property (which includes both residential and non-residential property) has a different threshold than residential property. If the relevant consideration for non-residential or mixed property is less than £150,000, no SDLT is payable under s55, Part 4 of the Finance Act 2003. As a result, if the property is mixed, a purchase price of £127,000 would not trigger SDLT liability.

Second, is the property freehold or leasehold, and if leasehold, would the buyer be responsible for the lease?

Third, does the client have the authority to negotiate a lower purchase price with the seller? Is there a flaw or restriction that might hinder the buyer's usage of the property that has been discovered? This, however, must be approached with caution to avoid the seller withdrawing from the transaction. Do you have any rent to pay? Rent will be subject to SDLT under Schedule 5 of the Finance Act 2003.

I'll now go over each of the three points you've requested that I look at one by one.

1. Applying for help in a disadvantaged area

Unfortunately, assistance for disadvantaged areas is no longer accessible. Schedule 39(1), paragraph 8(1) of the Finance Act 2012 repealed S57 of the Finance Act 2003, which dealt with disadvantaged regions relief. This was revoked on July 17, 2012, and it now applies to transactions with an effective date of April 6, 2013 or later.

Other full or partial reliefs may, however, be available. I'll need to know the following to see if the customer is entitled for any more full or partial reliefs:

- i. Is the client purchasing the property for personal reasons or as part of a house construction firm, a property trader, or an employer in the case of relocating?
- ii. Is the client purchasing a number of properties?
- iii. Is the acquisition a right-to-purchase transaction?

2. Allocating the purchase price between the land component and the price for chattels in order to avoid civil and criminal consequences

Chargeable land transactions are subject to SDLT. A chargeable land transaction is defined as an estate, interest, right, or authority in or over property in the United Kingdom under section 48 of the Finance Act 2003. Any fittings to the land are regarded to be part of the land for SDLT purposes because land includes buildings and

structures. Because fittings and chattels are not considered part of the land, they are exempt from the SDLT.

It is important to ensure the following in order to divide the purchase price between the land element and the price for chattels:

- i. That the goods deducted from the purchase price are chattels rather than fixtures;
- ii. That any distribution is fair and reasonable. The Finance Act's Schedule 4 paragraph 4 states that consideration attributed in part to a land transaction and in part to another item must be distributed on an equitable and reasonable basis.

In the case of *Holland v Hodgson*, two criteria were developed for determining whether something is part of the property or a chattel separate from the land. Despite the fact that this case dates from 1861 to 1873, it is still considered authoritative. The following are the requirements:

- i. An item's degree of annexation to the land: is it fixed, and if so, how firmly, and what damage would it cause if it is removed; and
- ii. What was the goal of the annexation: to improve the enjoyment of the land or the item?

In many circumstances, HMRC emphasizes the purpose.

An unfixed thing can still be a fixture if its aim is to better enjoy the land rather than the object itself, according to the Court of Appeal in *Berkley v Poulett*, while a fixed object can still be chattel if its purpose is to better enjoy the object itself.

The Court of Appeal concluded in *Botham v TSB* that kitchen worktops were fixtures, but that 'white goods' (fridges, ovens, and so on) were chattels. The degree of annexation for the 'white products' was minimal; they could be purchased independently and were only meant to last a short time.

Orsman v Revenue and Customs Commissioners, which was decided in 2012, is a significant case in this area. The court affirmed the Revenue's revision to a land

transaction report, ruling that fitted units and a worktop in a garage (which were listed among the chattels) were fixtures and part of the land. The workbench was attached to the house, allowing that section of the garage to be used as a workspace. The units were only loosely attached, but they were there to make the garage a functional storage and work area, as well as a feature that added value to the home. The Court determined that allocating £250,800 of the consideration paid to the house and garage countertops and units was just and reasonable (rather than the appellant's apportionment of £250,000 to the house). The transaction was therefore subject to a higher rate of Stamp Duty Land Tax. This case demonstrates that HMRC is becoming more aggressive in pursuing SDLT transactions when an apportionment has been made, particularly when the purchase price of a home is near to the SDLT threshold. It also demonstrates that HMRC is not only targeting large-scale tax evasion, but also smaller-scale evasion.

When completing the land transaction return, it is the buyer's responsibility to verify that apportionments are just and reasonable, regardless of whether the parties to the transaction agreed to a certain apportionment. Items must be priced at a rate that reflects their fair market value, taking into consideration criteria like age, quality, and so on. It would be worthwhile to try to collect receipts/values from the sellers for any things to be sold separately in order to ensure that a fair and reasonable price is agreed upon, as well as in case HMRC investigates and requests evidence. The sum set for chattels should be included as part of the contract for sale, and the amount agreed for each chattel should be indicated separately on the fixtures and fittings list that should be attached to the contract when apportioning. It's worth mentioning that a false apportionment might render a sale contract unenforceable, which would have disastrous repercussions.

3. Items that HMRC will consider as chattels for the purposes of any lawful apportionment to avoid SDLT payment

HMRC has provided guidance on which objects are and are not considered chattels in its SDLT manual. However, HMRC has stated that this is not an exhaustive list and that

each case would be evaluated on its own merits. In this area, the law is continually evolving.

- i. In general, the following items will be considered chattels:
- ii. Carpets (fitted or unfitted);
- iii. drapes and blinds;
- iv. furniture that stands alone;
- v. white kitchen appliances (fridge, oven, etc.);
- vi. Electric and gas fires (assuming they can be eliminated without causing property damage by disconnecting the power source);
- vii. (Unless recessed), light shades and fixtures; and
- viii. Plants that are being grown in pots or containers.

The following items will not be considered chattels in most cases:

fitted kitchen cabinets, sinks, and cupboards;

- i. agas and ovens that are installed on the wall;
- ii. hygienic gear for the bathroom;
- iii. centralized heating and cooling systems;
- iv. alarm systems for intruders; and

- v. any plants, shrubs, or trees that grow in the soil and are considered part of the land

Points to consider

- i. Under Schedule 10 part 3 paragraph 12 of the Finance Act 2003, HMRC may make an enquiry into a land transaction return by notice within 9 months of the filing date. An investigation might be opened for a variety of reasons, including the distribution of the purchase price. HMRC can also alter a return if it believes the tax is insufficient, requiring the buyer to pay more tax. Unpaid tax and penalties will be subject to interest under sections 87 and 88 of the Act.
- ii. If the purchase price is divided between the land element and the chattels, the purchase price is £125,000 or less, a land transaction return must still be filed with HMRC. Despite the fact that no SDLT would be due, the return must be submitted within 30 days of completion under section 76 of the Finance Act 2003. Without a certificate verifying compliance with the SDLT requirements under section 79 of the Act, the property will not be registered with the Land Registry. For late or non-submission, the purchaser may be subject to a penalty with interest.
- iii. As the buyer's agent, you will submit the SDLT return to HMRC in addition to working for the buyer. Any wrong return submitted could have serious ramifications for both you (as a solicitor) and the firm; in the worst-case scenario, the act could be considered fraud.
- iv. It is critical to remember the SRA Principles 2011. Principles 1, 2, and 6 in particular.
- v. The purchaser is required to keep and preserve records for 6 years from the day HMRC no longer has the right to initiate an inquiry under Schedule 10 paragraph 9 of the Finance Act 2003. A penalty may be imposed if records are not kept and preserved.

- vi. If the transaction involves a lender, you should examine if any apportionment may effect their interest. Any change in the purchase price must be reported to the lender, who may then rescind or amend the mortgage offer.
- vii. Keep anti-money laundering measures in mind, as well as your compliance duties. If a client asks you to make an irregular apportionment in order to avoid paying SDLT, you may find yourself in violation of the law.

Research trail

Search topics	Stamp duty land tax
Keywords sought	Parties names to cases
Source used	Westlaw Cases
Access points	<ol style="list-style-type: none"> 1. Used the University library to access Westlaw. 2. I went to the top of the page and clicked on Cases. 3. In the Parties Names box, separately enter the following and click search: Orsman v Revenue and Customs Commissioners, Berkley v Poulett, Botham v TSB Bank plc, and Holland v Hodgson 4. View Case Analysis for Holland v Hodgson by clicking on the citation: (1871-72) L.R. 7 C.P. 328. Positive or Neutral Judicial Treatment is noted. 5. Select Case Analysis for Berkley v Poulett. Judicial Treatment- Positive or Neutral Status 6. In the case of Botham v TSB Bank plc, click the citation: (1997) 73 P. & C.R. D1 and also look at the Case Analysis. 7. Click on Case Analysis and Official Transcript for Orsman v The Commission for Her Majesty's Revenue and Customs.
Date sought	30 th November 2021
Source evaluation	Information was obtained that added to the details of the cases that had already been discovered through inquiry.

Next steps	Check Finance Act of 2003
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Search topic	Disadvantaged area relief
Keywords sought	Finance Act 2003
Source used	Westlaw Legislation
Access points	<ol style="list-style-type: none"> 1. Used the University library to access Westlaw. 2. I went to the top of the page and clicked on Legislation. 3. Typed 'Finance Act 2003' into the Act/SI Title box and searched. 4. Selected 'Finance Act 2003' as the first option for Act arrangement. <p>I scrolled through Act and found's57 Relief for Disadvantaged Areas', which I clicked.</p>
Date sought	1 st December 2021
Source evaluation	The Finance Act 2012, Sch 39(1) para.8 repealed this part of the Act (1). This was repealed on July 17, 2012, and it takes effect for transactions that occur on or after April 6, 2013, subject to the transitional conditions set out in Sch 39 para.12 of the Finance Act 2012.
Next step	Will look into Section 39, paragraph 12 of the Finance Act of 2012

Search topic	Disadvantaged area relief
Keywords sought	Finance Act 2012
Source used	Westlaw Legislation
Access points	<ol style="list-style-type: none"> 1. Used the University library to access Westlaw. 2. I went to the top of the page and clicked on Legislation. 3. Typed 'Finance Act 2012' into the Act/SI Title box and searched. 4. Select 'Finance Act 2012' from the 'Arrangement of Acts' drop-down menu. <p>'Sch 39 para.12' was found while scrolling through the Act.</p>
Date of sought	2 nd December 2021

Source Evaluation	This was not relevant to my study project because it only relates to contracts signed before or on March 16, 2005.
Next steps	Visit HMRC website

Search topic	Stamp duty land tax
Keywords to sought	Stamp duty land tax
Source used	HMRC website- www.hmrc.gov.uk
Access points	<ol style="list-style-type: none"> 1. Accessed www.hmrc.gov.uk 2. Select 'Individuals & Employees' from the drop-down menu. 3. Under 'Tell me about...', clicked on 'More subjects.' 4. Under 'Individuals & Employees,' I selected 'Stamp Duty Land Tax.'
Date sought	3 rd December 2021

<p>Source Evaluation</p>	<p>I was able to locate the following information: Calculating the chargeable consideration amount Any money paid for assets that are part of the land or property is included in the chargeable consideration.</p> <p>These assets may include the following:</p> <p>Farm buildings, for example, are examples of buildings and structures that are part of the land.</p> <p>Freestanding furniture, rugs, and curtains are not included in fixtures and fittings, which include bathroom and kitchen fittings.</p> <p>intangible assets, such as the value of the land's goodwill.</p> <p>Items not covered by the reimbursable consideration</p> <p>When a payment for items that are not part of the chargeable consideration is included in the purchase price, those items must be valued at a rate that reflects their fair market worth. If carpets are included in the sale of a property, for example, the buyer and seller must agree on a fair price that represents the age and quality of the carpets. The chargeable consideration is then calculated by subtracting this from the price paid.</p> <p>The portion of the acquisition price allotted to such assets must be perceived as reasonable and fair.</p> <p>When it comes to leasehold homes, calculating SDLT is a bit more complicated.</p> <p>SDLT is due on both the purchase price and any significant annual rent for leasehold land and property. The two sections of the lease are computed individually, with different procedures for residential and non-residential leases.</p> <p>Purchases of leaseholds are subject to the SDLT.</p> <p>When someone acquires a leasehold property, the amount of Stamp Duty Land Tax (SDLT) they must pay is determined by whether the lease is new or existing.</p> <p>Keep in mind that failing to claim a relief when it is due can cost the buyer a lot of money. Similarly, claiming a relief when it is not due may result in a penalty.</p>
<p>Next steps</p>	<p>End.</p>

Bibliography

Legislation

Finance Act 2003

Finance Act 2012

Case Law

Orsman v The Commission for Her Majesty's Revenue and Customs [2012] UKFTT 227 (TC)

Holland v Hodgson [\(1871-72\) L.R. 7 C.P. 328](#)

Berkley v Poulett [1977] 1 E.G.L.R. 86

Botham v TSB [\(1997\) 73 P. & C.R. D1](#)

Lexis Nexis PSL Practice Notes:

SDLT- chargeable consideration

SDLT- rates of SDLT

Land Transactions, chargeable interests and chargeable transactions