

Stamp Duty Land Tax

SECOND EDITION

Michael Thomas

Consultant Editor David Goy QC

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Based on the first edition with contributions from
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Stamp Duty Land Tax

Stamp Duty Land Tax ('SDLT') raises some £6 billion per annum – more revenue than inheritance tax and capital gains tax put together. Providing a much-needed, incisive and comprehensive commentary on every aspect of SDLT, this book will appeal to property lawyers, tax specialists, and anyone involved in land transactions. It gives a detailed discussion of the legislation and puts forward suggested interpretations and planning opportunities.

This second edition is fully updated and deals with the many changes that have been made since the introduction of SDLT. New chapters provide in-depth coverage of the treatment of both leases and partnerships. Areas of difficulty which arise in practice are dealt with throughout. In addition, the chapter on planning has been revised to take account of new legislation and case law, including the impact of the SDLT disclosure rules.

MICHAEL THOMAS is a barrister at Gray's Inn Tax Chambers. His practice spans all areas of tax law and includes giving transactional and planning advice, advising on tax disputes and appearing as advocate. A large proportion of his work involves advising on commercial property transactions.

Reviews of the first edition:

'A thought-provoking new classic.'

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For Aidan

Preface to the first edition

Stamp duty land tax (SDLT) is a very important new tax. Although there are many similarities with its predecessor, stamp duty, SDLT is founded upon an entirely different set of concepts. Moreover, the new tax is enforceable through a tough compliance regime which requires taxpayers to self-assess. SDLT is intended to raise in excess of £4 billion per year: more than inheritance tax and capital gains tax combined. Up until quite recently, stamp duty was often something of an afterthought when advising on land transactions; now SDLT is a priority. The importance of the new tax cannot be overstated.

My aim has been to write a detailed commentary on the new SDLT code contained in the Finance Act 2003. This is a forward-facing book and my first priority has been to state the law as it will be after the new regime takes effect on 1 December 2003. Where it is necessary to refer back to the stamp duty position in order to understand the new SDLT provisions that apply to a particular area then I have done so. I have also tried to summarise in Chapter 1 the major changes, both procedural and substantive, brought about by SDLT. Although stamp duty continues to apply to sales of shares and even some land transactions, I have referred to it throughout in the past tense both because the general rule is that it will no longer apply to land transactions and in order to make the discussion easier to follow.

The structure of the material is, I hope, self-explanatory from the Contents. For each area I have tried to set out the law and then to explain how it will apply in practice. My aim has been to focus on areas where the law is likely to cause difficulties. I have tried to express myself in a style that is readily accessible to both non-tax specialists and non-lawyers; although of course I have been hindered in this both by the nature of the material and by my own ability.

I have been very fortunate that the KPMG Stamp Taxes Group, led by Steven McGrady, have lent their vast expertise to this project. Steven McGrady and Gordon Keenay have had considerable input into the book at every stage from the planning to the proof-reading. KPMG's assistance has been especially valuable in addressing the areas where the law runs into practical difficulties and in writing Chapter 8 ('Structuring transactions and planning'). This book is much better as a result of KPMG's input, and I am very grateful to both Steven McGrady and Gordon Keenay in particular for the huge contributions which they have made and for giving their time so freely.

I would also like to thank the following members of KPMG's team: Alan Cook of McGrigor Donald in Glasgow not only contributed the passages on

Scots law (with additional input from Ian Gordon, also of McGrigor Donald) and the Table of Scottish property deeds but also proof-read the drafts of several chapters, saving me from several mistakes and adding some important improvements. Alan McAlister of McGrigor Donald in Belfast contributed the references to Northern Ireland law. Sean Randall made contributions to the discussion of group relief in Chapter 5 and drew up the Table of cases and the Table of statutes with Tina Thorogood. Simon Yeo made important contributions to the material on partnerships in Chapter 3 and his proof-reading of the draft of Chapter 3 resulted in a number of improvements to the text. Gordon Keenay has been participating in the ongoing consultations on leases and complex commercial transactions which resulted in his making large contributions to both Chapter 6, including the comparative table, and the section on the likely future developments in Chapter 9. Gordon also drew up the Practitioner checklist and the Table of exemptions and reliefs and, together with Alan Cook, the Glossary. Steven McGrady wrote the section on PFI transactions in Chapter 3 and also made a big contribution to Chapter 9. Finally, Tina Thorogood compiled the index with Gordon Keenay, prepared the List of abbreviations and helped prepare the final manuscript for submission.

I would also like to thank my colleagues in Gray's Inn Tax Chambers for their support in the writing of this book. Patrick Soares and Patrick Way both lent me copies of their own articles on SDLT. I am especially grateful to Stephanie Talbot who typed the manuscript while at home convalescing after an operation and to Elizabeth Allen, Dawn Anderson and Jane Fulbrook who covered for her absence. Most importantly, I would like to thank David Goy for guiding me through this project and doing his best to keep me from falling into error. This book has benefited greatly both from David's wealth of expertise on property taxation and his experience of writing practitioner textbooks. The remaining errors are, of course, all my own.

The timetable for writing this book has been extremely tight. I would like to thank my publisher, Kim Hughes, at Cambridge University Press for her assistance in this project and for remaining calm as the deadline for the manuscript slowly receded. I would also like to thank the team at Cambridge University Press and, in particular, Martin Gleeson and Neil de Cort for their efforts in rushing through the manuscript for publication in order to compensate for the missed deadlines.

Finally, I would like to thank Pippa for her encouragement and patience.

I have stated the law as at 8 September 2003.

Michael Thomas
Gray's Inn Tax Chambers
8 September 2003

Preface to the second edition

Since the first edition of this work there have been major changes to the SDLT code. The two most important of these are the introduction of the new regimes for leases and partnerships contained in Schedules 17A and 15 FA 2003 respectively. A multitude of other legislative changes have been made, some of which, such as the abolition of disadvantaged areas relief for commercial property and the new restrictions on group relief, are very important indeed. Other changes are of much more limited application but are of no less importance for those transactions to which they apply. Although we await the first case on SDLT, the House of Lords has given new guidance on the *Ramsay* principle. From 1 August 2005, SDLT is subject to the disclosure rules, and these will no doubt help to shape the future of the tax. On top of all that, we have had nearly two years of SDLT applying in practice, during which many difficulties, both real and apparent, have been identified. Some of these have been dealt with, one way or another, but plenty of problems and areas of uncertainty remain.

So, there is no shortage of topics for this second edition to deal with. The challenge in writing it has been both to incorporate the many changes and to discuss the many areas of difficulty in suitable detail while at the same time trying to preserve the structure of the book so that the commentary remains accessible to those unfamiliar with the tax or coming to a particular area, or indeed SDLT as a whole, for the first time. Readers will make up their own minds how far I have managed to succeed in this.

I am very pleased that my colleague, David Goy QC, has continued to lend his vast expertise to this book. His reading of the text has resulted in numerous improvements of both substance and style. The other major contributor to this second edition has been Alan Cook of McGrigors in Glasgow. In addition to updating his work on Scots law, Alan proof-read the drafts of the new chapter on leases at various stages, resulting in many important improvements to the text. Alan also made a massive contribution to the updating of the compliance chapter by drawing up an extremely comprehensive list of points and suggestions for inclusion and a large share of the credit for anything that is good about the updated chapter 9 rightly belongs to him. All of Alan's contributions have been of the very highest quality, despite many of them having been made at short notice. The remaining errors are all my own work.

This book simply would not have been possible without the help of my colleagues, Stephanie Talbot and Jane Fulbrook, with support from Elizabeth Allen, who typed the manuscript and put through the endless list of changes as

I struggled to finalise it. Not only that, but much of this work was done in a mad rush in October 2005 in order to meet a very tight publishing deadline.

I would like to thank the KPMG Stamp Taxes Group for looking at some of the early drafts and for their outstanding contribution to the first edition. I would also like to thank my colleagues in Gray's Inn Tax Chambers, all of whom have helped with this book in one way or another by sharing their views on points of interest and difficulty on SDLT. The Stamp Taxes Practitioners Group, chaired by Lakshmi Narain, is proving to be an effective forum for discussing SDLT issues. One of the STPG's aims is to encourage dialogue between HMRC and the private sector. Such a dialogue has been made possible through the willingness of HMRC, in particular through Crispin Taylor, the Assistant Director of HMRC's stamp taxes policy unit, and his colleague, John Neale, to engage with the private sector with great openness. This book has benefited greatly from the STPG's discussions with HMRC, in particular the chapter on partnerships where HMRC candidly admit that the law is far from perfect. Kim Hughes, Jane O'Regan and the team at Cambridge University Press have again had to rush the book through for publication under a very tight timetable.

Finally, I would like to thank my family for their patience. During the writing of this book, Pippa was pregnant with Aidan, who arrived in June. Trying to see my family, finish the book and keep up with my practice has made for a demanding few months. I would like to thank Aidan for managing to sleep so well through the night and Pippa for looking after him when he did not. I will not be writing a new edition in 2006 so in the meantime the latest developments will be recorded on the online bulletin board at www.cambridge.org/sdlit/, which I will try to keep more up to date than I have previously managed.

Michael Thomas
Gray's Inn Tax Chambers
3 November 2005

The application of SDLT to Scotland and Northern Ireland

The SDLT provisions in the Finance Act 2003 apply to the whole of the United Kingdom, including Scotland and Northern Ireland, both of which have their own legal systems over which the common UK tax system is spread.

Scots property law is very different to English property law; for example, there is no concept of equity, so that there is no distinction between legal and equitable interests in land. The feudal system was abolished in 2004 and replaced by a single ownership interest in land (as opposed to any lease interests which may exist over the same land); and the approach to leases is different in certain key respects, including that the Landlord and Tenant Acts do not apply in Scotland. This book aims to highlight the principal differences between English and Scots law as they impact on SDLT, the intention being to flag any peculiarly Scottish aspects in order to assist the Scottish practitioner. However, it must be emphasised that a detailed treatment of the differences between the two legal systems is outside the scope of this book.

Northern Irish property law is much closer to English law. The Act contains specific references to technical legal terms and statutory provisions which relate purely to Northern Ireland, but to all intents and purposes these equate to the like interest and equivalent provisions in the legislation applicable in England and Wales. In that context, it is hoped that Northern Irish practitioners will take this into account when reading the text and will find the information herein of considerable assistance in understanding the new tax regime. Again, it should be emphasised that this book is not intended to be a definitive statement of Northern Irish law.

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