

The SDLT Holiday - Client Guide

Deadline extended | Up to £500,000 only | Additional 3% rate

First Time Buyer relief

This is completely suspended until 30th June 2021 but **will** be available during the further temporary relief period until 30 September 2021. Your conveyancer can calculate what the effects will be of completion taking place on different dates to help you plan.

Multiple Dwelling Relief

The rules about Multiple Dwelling Relief are complex and will usually require specialist tax advice. For example, in some cases, such as purchases of multiple dwellings for a total price up to £500,000 it may be better **NOT** to claim the relief.

This is because if it was claimed then the minimum rate of tax of 1%, would apply, rather than the zero rate under the SDLT Holiday. If you are planning on buying a series of dwellings or other non-residential property then we would strongly advise you to get specialist tax advice.

'Substantial performance'

In general terms, 'substantial performance' is where there is a contract in place, but the buyer moves in and takes possession of the property before legal completion, or pays substantially the whole of the price before legal completion, or starts paying rent before legal completion. If this happens you have to pay the tax within 14 days, even though you haven't legally completed your purchase.

You might be able to arrange this to rescue a situation where completion looks like it might be delayed until after one of the key dates.

However, in most cases buyers will not be able to do this unless they are a cash buyer and are happy to pay the money in advance, or the seller is prepared to allow the buyer to move in before they buy the property. Also, lenders won't generally lend money to the buyer until the date of legal completion.



'SDLT holiday' - Extension announced

Under the SDLT Holiday extension, the Stamp Duty Land Tax ('SDLT') on the first **£500,000** of consideration on **wholly residential** property transactions completed on or before **30 June 2021** will be **0%**.

For purchases completed after that date but on or before **30 September 2021** the rate on the first **£250,000** will be 0% (in this note we will refer to these two dates as '**key dates**').

For the rest of the price paid over those amounts, the tax rates will be the same as the rates before the holiday was announced in July 2020. The 'holiday' could mean a saving of up to £15,000 in some cases. However, the rates for commercial or mixed-use property remain the same.

When the holiday is over

The key point is that, to get the benefit of the SDLT Holiday, the 'tax point' for the transaction **must** happen on or before either 30 June 2021 or if not, before 30 September 2021. The tax point is **legal completion** or '**substantial performance**' of the contract, whichever happens first. To take advantage of the SDLT Holiday, you must make sure that your purchase contract says that you will complete the purchase (or there is 'substantial performance') on or **before** one of the **key dates**.

If completion is delayed

Let's assume you had agreed a date for legal completion to take place on or before 30th September 2021. But for some reason (perhaps through no fault of yours) the legal completion takes place after that date.

This could be because:

- There is a local lock-down or government measures which mean you can't complete when you were supposed to (this happened on a lot of purchases early in the pandemic, for all sorts of reasons).
- It could be you (or the seller) can't get a removal van on the day, or the bank money transfer system fails because of too many people trying to move at the last minute.
- It could be if you are buying a property from the estate of a deceased person and there are delays getting the grant of probate to allow the sellers to complete the sale.
- It could be that your new house is not ready when expected.

If this happens you will have to pay the full rate of tax with no holiday discount.

If this is a possibility, then you must budget for this. You would need to pay us the extra tax immediately so we could send in your tax return and register your transfer and mortgage. We cannot lend you the extra tax due.



What rate of tax applies?

In general, there are 5 different SDLT tax rates that could apply to a transaction!

Which rate applies depends on many things, including the physical aspects of the property and your personal circumstances. It is **not** just the figure on the transfer that decides this.

For example, during the SDLT Holiday the rate of tax payable for properties up to £500,000 that are 'wholly residential' will be lower than the rate of tax for properties that are mixed residential use and non-residential use, or wholly non-residential use (e.g. commercial use). This is the opposite of the position that existed before the SDLT Holiday started, and which will exist after the SDLT Holiday ends.

Currently there are many conflicting cases and guidance about the meaning of 'wholly residential property'. HMRC will not tell you or us which category applies to any particular property, and its online guidance is sometimes wrong, or misleading. This is currently a huge problem for conveyancers generally, especially with the amount of money at stake.

In addition, HMRC is increasingly launching investigations into previous tax returns to recover more tax, interest and penalties where it can. Conveyancers and their clients are being put in a very difficult position.

As a result, if there are any unusual features about the property it may be necessary to get specialist tax advice to decide whether the property is 'wholly residential' and so able to claim the SDLT Holiday.

Wales

The tax position in Wales is different to the position in England. Property transactions there are subject to Land Transaction Tax. Although there are many similarities with SDLT, there are significant differences too.

In Wales the 'holiday' threshold of £250,000 has been extended until the 30 June 2021. There is no additional reduction until September as in England. You will need to obtain specialist Welsh tax advice on any property you are buying there.

Don't leave it till the last minute!

For this reason we would not agree to complete your purchase close to either of the key dates in case unforeseen problems arise. Give yourself plenty of time.

If there are delays in completion for any reason, then it is very likely we will have to increase any fee quoted to you to deal with what could become a very difficult and complex situation to resolve. We may have to suggest you obtain the advice of a litigation solicitor. If so, you will need to pay their fees for any correspondence on the issue, or any litigation needed to recover the extra tax paid from the seller, where the delay is the seller's fault.

New build houses

When you buy a new house you often don't know when it will be ready so you can then go on to complete the purchase. If it is ready (and you complete the purchase) on or before either key dates you will get the benefit of the SDLT Holiday. If it completes after those dates then you will not.

If you are concerned about this then you could ask the builder to fix the date of completion to be on or before one of the key dates. Alternatively, you could see if you can 'substantially perform' the transaction before that date. There would need to be special provisions agreed in the contract to deal with this. Your conveyancer may recommend you get specialist tax advice on this drafting. At the moment it is not clear that any builder would be prepared to amend their contracts to allow this.

The situation might develop over the next few months and it may be that builders become prepared to do this.

What about the 'Additional Dwelling' 3% rate?

In general, where a sole buyer of a dwelling (or if more than one buyer, any of them) owns another dwelling (or a share in one) anywhere in the world (or is buying through a company) then they have to pay an Additional Dwelling rate of an extra 3% tax on top of the usual SDLT 'wholly residential' rates. This Additional 3% Rate still applies, despite the SDLT Holiday on the normal 'wholly residential' property rate.

Where it applies, this means that tax at 3% will still have to be paid on the whole of the first £500,000. You must tell us if there is any possibility this might apply to your purchase. If so we may suggest you obtain specialist tax advice. This is one of the most complex areas of SDLT, and so we cannot advise on it.

However, this creates an opportunity to save SDLT for any company buying a dwelling for up to £500,000 on or before the key dates, as it might only pay the Additional 3% Rate and not the normal SDLT rate PLUS the Additional 3% Rate.

Conveyancers cannot give tax advice on SDLT.

Conveyancers cannot give specialist advice on the impact of SDLT on your transaction, or any of the points mentioned in this note. Over the last 6 years, SDLT has gone from being relatively straightforward, to becoming one of the most complex and difficult taxes on the UK statute book.

If you want to explore any of the points mentioned in this guide then we can put you in touch with specialist SDLT tax advisers who can give you their advice. Naturally their charges for tax advice will not be part of the conveyancing costs we have quoted to you, and you may have to pay their fees directly to them.

However, given the amount of tax at stake, you may consider this worthwhile. If you ask us to get tax advice for you, then the cost of this advice will be in addition to any fee quoted to you. Also, we will rely on that advice to you, and will follow the instructions in the advice. We will not be liable to you in any way for the advice of any independent tax adviser to you.