

## Leases & Stamp Duty

As you may by now know, Stamp Duty Land Tax (SDLT) is sometimes payable on Leases as it is on standard property purchases. The SDLT payable is determined by the Net Present Value (NPV) of the Lease, and usually only applies for medium to long term Leases with relatively high yearly rents.

There are a number of circumstances during the term of your Lease when SDLT may again become payable. It is imperative that you are aware of these circumstances as the Inland Revenue are becoming more and more aggressive in their pursuit of individuals and companies who have avoided, forgotten or simply not been aware that an SDLT payment has become due. Tax avoidance could leave you liable to pay the sum owed together with fines if you fail to correctly pay SDLT when due. The Inland Revenue have the ability to query returns up to 21 years after they were due, and this gives them a large amount of leeway to chase missed SDLT payments.

Below are a number of circumstances which may arise during, or at the end of your current Lease, and which may give rise to an SDLT liability. Should you require any advice in respect of the same either now, or at any stage in the future, please do not hesitate to contact us closer to the time for further advice. Please note that the responsibility for SDLT payments is your own and not knowing the rules will not be a valid excuse for the Inland Revenue.

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### Common SDLT requirements under leases:

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#### **Rent review**

The SDLT payable on a Lease is calculated by reference to the first 5 years' rent. Therefore, if you have a rent review within the first five years AND the new rent amount was not known at the outset (for example where rents are to be reviewed in line with market rents or business results as at a future date, or index-linked) then an additional return needs to be filed with an additional SDLT payment, once the revised rent is determined.

Furthermore, rent reviews which occur after the first 5 years can require an additional SDLT return where there has been deemed to be an **abnormal increase** in rent. This situation can arise if the rent has been kept artificially low for the initial period in order to reduce SDLT. However, this could also arise if any unlucky tenant is given a large uplift in rent on review.

Accordingly it is advisable to seek advice prior to or on the determination of any rent review, to ascertain the likely SDLT implications and whether any payments are required.

### Lease expiry and holding over

If your original Lease term expires, but you continue in occupation of the premises, then you are deemed to be 'holding over' your Lease. Once your Lease continues after its contractual expiry date then it is treated as if the original term of your Lease has been extended by one year. i.e. a 5 year Lease will be treated as a 6 year Lease. If SDLT was paid at the start of your Lease (or if the extra year takes the Lease over the SDLT threshold), then at this stage a further SDLT payment will be required and will need to be filed with the Inland Revenue. For each subsequent year that the Lease is 'held over' another SDLT form needs to be filed at the Inland Revenue. Failure to file further returns could result in fines.

The time limits for filing the initial return are one month from the original expiry date of your Lease, and therefore you should consider obtaining advice prior to the expiry of your Lease.

### Lease renewals

Unless your Lease is expressly excluded from the Landlord and Tenant Act 1954, then as a commercial tenant, you are entitled to a new Lease (on substantially the same terms) at the expiry of your current Lease. Such renewal Leases could have SDLT implications.

You should always seek legal advice when taking a renewal Lease as you have numerous rights to which you will be entitled. Stamp duty issues will also apply in this scenario.

### Lease extension

If you agree to extend the term of your current Lease, then the extension is treated as a surrender and re-grant, and SDLT may be payable on the value of the re-granted Lease.

### Breaking a Lease

Please note that if you decide to break your Lease early, you are **NOT** entitled to get any money back from the Inland Revenue, despite having paid SDLT for the full Lease term.

Should you have any concerns regarding Stamp Duty Land Tax issues please do not hesitate to contact us.

**Please feel free to contact Stephenson's Commercial Real Estate team on 01942 774182 for more information or visit [www.stephensons.co.uk](http://www.stephensons.co.uk)**

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