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CITATION

THE NEW STAMP DUTY LAND TAX CHANGES

The Government has recently introduced changes to the Stamp Duty Land Tax (SDLT) payable on both commercial and residential property transactions.

RESIDENTIAL PROPERTY TRANSACTIONS

The Chancellor announced in the Autumn Statement that new rates of SDLT on purchases of additional residential properties would apply from 1 April 2016. The new rates will be 3% above the normal rate of SDLT.

The higher rates will potentially apply if, at the end of the day of the purchase transaction, the individual owns two or more residential properties. The announcement will be of concern to those looking to invest in the buy-to–let market or those looking to purchase a second home.

The additional rate will not apply where a person sells and buys their own main residence at the same time. The sale and purchase would have to take place on the same day and consideration would have to be given as to what constitutes a main residence. The legislation is complicated and a potential minefield.

After some consultation the Government announced:

- Purchasers will have 36 months to claim a refund of the higher rates if they buy a new main residence before disposing of their previous main residence
- Purchasers will also have 36 months between selling a main residence and replacing it with another main residence without having to pay the higher rates
- A small share in a property which has been inherited within the 36 months prior to a transaction will not be considered as an additional property when applying the higher rates
- There will be no exemption from the higher rates for significant investors.

The main target of the higher rates is purchases of buy-to-let properties or second homes. However, there will be some purchasers who will have to pay the additional charge even though the property purchased will not into fall into those categories.

Care will be needed if an individual already owns, or partly owns, a property in the UK or overseas, and transacts to purchase another property without having disposed of the first.

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[PROPERTY]

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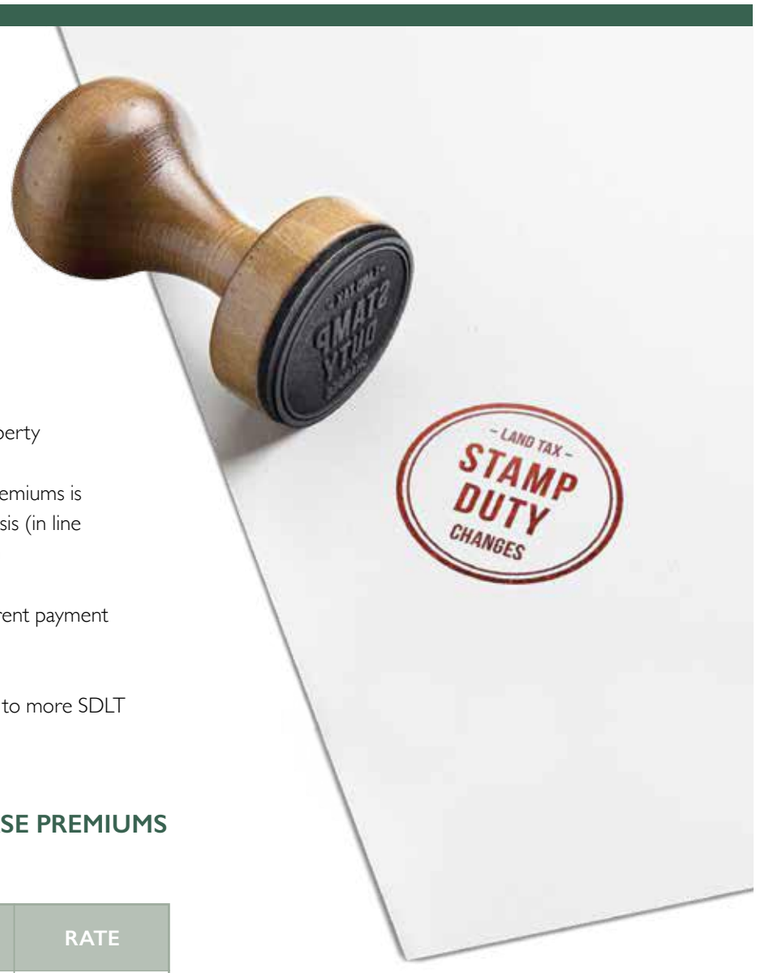
COMMERCIAL PROPERTY TRANSACTIONS



The main points to note are:

- The new SDLT rates are effective from 17 March 2016
- They apply to commercial and mixed use property
- The payment calculation for sales and lease premiums is changed from a slab basis to a "fairer" slice basis (in line with previous changes to residential property)
- A new 2% rate has now been introduced for rent payment on the grant of a lease
- Transactions over £1.05 million will be subject to more SDLT under the new system

NEW RATES FOR SALES AND LEASE PREMIUMS

(non-rent consideration)

RATE BAND	RATE
£0 - £150,000	0%
£150,000 - £250,000	2%
£250,000 +	5%

NEW RATES FOR RENT PAID UNDER A LEASE BASED ON NET PRESENT VALUE APPLICABLE

(this is the annual rent x length of term rent consideration)

NET PRESENT VALUE OF RENT	RATE
£0 - 150,000	0%
£150,000 - £5 million	1%
Over £5 million +	2%

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[WILLS]

REMEMBER YOUR PARTNER, **NOT** YOUR EX

The intestacy provisions govern what will happen to your estate when you die in the event that you have not made a Will.

If you die leaving a spouse/civil partner and children and your estate is worth more than £250,000, the spouse/civil partner will inherit your personal possessions, the first £250,000 and one half of the remaining estate. The children will inherit the other half (and in equal shares, if more than one).

If you die leaving a spouse/civil partner but no children, the spouse/civil partner will inherit the whole of your estate.

The intestacy provisions may, therefore, suit certain family arrangements. However, as is becoming increasingly common, imagine the scenario that you were married and separated but not legally divorced or your civil partnership has not been legally ended. You had entered into another relationship and may have been with your new partner for many years but had never married/ entered into a civil partnership as you had never divorced. In this situation, the partner, who you had been sharing your life with, would not receive any of your estate under the intestacy provisions and instead your estranged spouse/civil partner would inherit, as above, under the intestacy provisions.

This situation can be easily rectified by making a Will rather than relying on the intestacy provisions. You can then direct who will benefit from your estate rather than the intestacy provisions dictating.

This straightforward process is highly recommended to anyone who was married but has separated from their spouse/civil partner and would also be recommended to those in the process of divorcing, to cover the position until the divorce has been finalised. In this way, you can ensure that your current partner is the one remembered and not your estranged spouse/civil partner.

[GET IN TOUCH]

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THE DEREGULATION ACT 2015 - **IMPACT ON LANDLORDS**

When Assured Shorthold Tenancies were first introduced with a straight-forward procedure that guaranteed a Landlord's right to recover their property they instantly became the Landlord's choice of tenancy for all residential lettings.

A Landlord only needed to serve a Section 21 Notice on the Tenant giving them two months to vacate and if they did not leave the Landlord could then speed through the courts on a special accelerated possession procedure and obtain an order enforceable by the court bailiff.

So long as the Section 21 Notice was in the correct form and served with the correct notice period then no defence was available to the Tenant. If the Landlord wanted his property back then the courts would grant his wish.

As the Landlords were guaranteed the prompt recovery of their property residential buy-to-lets became very attractive and it has been argued that this fired up the relentless surge in property prices.

The Government has subsequently introduced the Deregulation Act 2015 which has reduced the appeal of residential lettings by imposing conditions on the validity of a Landlord's Section 21 Notice and therefore the availability of the accelerated possession procedure.

For all Assured Shorthold Tenancies that were entered into on or after 1st October 2015 a Section 21 Notice will now only be valid if:

1. The Tenancy Deposit scheme has been fully complied with; and
2. The Tenant has been provided with a copy of the government booklet "How to Rent: the checklist for renting in England"; and
3. The Tenant has been provided with a current Gas Safety Certificate; and
4. The Tenant has been provided with an Energy Performance Certificate; and
5. The Landlord has dealt with any written complaint made by the tenant regarding the property, and
6. A local authority has not already served an improvement notice under the health and safety rating system

The first four are relatively easy to deal with but the last two stipulations have caused much debate as they were apparently intended to deal with retaliatory evictions - where Landlords serve Section 21 Notices on blameless Tenants who have complained about a serious risk to their health due to poorly maintained accommodation. Such allegations may be true but from an equally blameless Landlord's perspective the concern is that this provision is going to encourage Tenants to make complaints to delay the enforcement of Section 21 Notices.

What may become a common scenario is where a Tenant makes a complaint before a Section 21 Notice is served but the Landlord dismisses the complaint as trivial or the tenant's own fault (e.g. there may be some condensation mould in the property but only because the Tenants dry their laundry on the radiators and keep the windows closed) and he then serves a Section 21 Notice genuinely believing he has no repairs to address.

The Local Authority may then become involved and take some time to deal with the Tenant's complaint especially if they are inundated with such requests and in the meantime the Section 21 papers go before a judge. As there is now an issue to deal with the judge cannot grant immediate possession and will have to list this for a hearing which could be a couple of months away.

In addition to these hurdles a Section 21 Notice cannot be served within the first four months of a tenancy but must be served at least two months before the possession is required making it impossible for those Landlords who used to grant 6-month tenancies at least as an initial getting-to-know-you tenancy. Also Section 21 Notices now have an expiry date and possession proceedings must be commenced within 6 months of service.

Perhaps it is with a little irony that this host of new rules have been imposed on the Landlords by the Deregulation Act 2015. I'm not at all clear on what has been deregulated but I'm sure George Orwell would be proud.

[GET IN TOUCH]

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[CORPORATE]

CHANGES TO CORPORATE GOVERNANCE: ARE YOU READY?

The introduction of the Small Business, Enterprise and Employment Act 2015 ("the Act") has resulted in some important changes to corporate governance that all UK directors should be aware of. The Act was introduced by the Government to enhance transparency of company ownership and control structures and to give clarity on the legal and beneficial ownership of businesses registered in the UK. The Act received Royal Assent on 26 March 2015 but the key changes are only now coming into effect with the remaining provisions due to be implemented in stages throughout 2016. Despite its title, the changes introduced by the Act will apply to all unlisted UK companies, not just small businesses.

SUMMARY OF KEY CHANGES

FILING REQUIREMENTS AND REGISTERS

From June 2016, there will no longer be a requirement for a company to file an annual return at Companies House. Instead, companies will be required to provide a 'confirmation statement' at least once every 12 months stating that it has provided all the information it was required to provide during the relevant 12 month period.

The Act will also introduce an option for companies to elect to keep the information that would usually be recorded in their statutory registers on a central public register maintained by Companies House.

PERSONS WITH SIGNIFICANT CONTROL

With effect from 6 April 2016, companies and LLPs are now required to maintain a register of persons with significant control ("PSC Register"). The PSC Register must contain details of any individual or entity that holds (directly or indirectly) more than 25% of the shares or voting rights in a company or otherwise exercises control over the company or its management.

To comply with the requirement, companies must take reasonable steps to identify persons who have significant control over the company and this will include considering all documents and information already available to it.

From June 2016, the Act will introduce a further requirement for companies to file the details of all persons with significant control at Companies House and this information will be available for public inspection.

Failure to comply with the requirements under the Act is a criminal offence and could lead to fines for the company and/or its directors or even imprisonment for the directors.

CORPORATE DIRECTORS

From October 2016, companies will be prohibited from appointing corporate directors (subject to limited exceptions) and may only appoint natural persons. Any existing corporate directors will cease to be directors 12 months after the ban takes effect. Companies should begin to prepare by identifying any corporate directors in their group and start considering appropriate replacements.

OTHER CHANGES

Other key changes include:

- An extension of directors' duties to shadow directors
- Abolition of the use of bearer shares
- The period for striking off a company by way of voluntary strike-off has been shortened from three to two months

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[FAMILY]

"I WISH I HAD DONE A PRE-NUP"

A recent survey by OnePoll found that over 10% of people regretted not having a pre-nuptial agreement, that is to say an agreement with their spouse before their marriage setting out how their finances should be arranged in the event that their relationship ends in divorce or permanent separation.

Their increasing popularity is reflected in the Divorce (Financial Provision) Bill which had its first reading in the House of Lords last year (although it appears now to have stalled and no further stages have been planned).

Such agreements do not provide any guarantee but they do carry significant weight on divorce and the court should uphold an agreement provided it is satisfied that:

- It was entered into freely
- Each party had a full understanding of its implications
- The circumstances are such that it would not be unfair to do so.

In order to meet these criteria it is advisable that :

- Each party takes independent legal advice
- It is agreed/negotiated and advice is obtained well in advance of the wedding
- Both parties share details of their financial circumstances
- The agreement is fair and flexible to accommodate major life changes e.g. children.

Even if a pre-nuptial agreement is not entirely upheld by the court its existence is likely to impact on the final settlement.

They may not be regarded as a particularly romantic preparation for marriage, but more and more people are contacting us about them and for many they are a worthwhile exercise. Whilst a pre-nup cannot provide a cast iron guarantee as to the likely financial outcome on separation or divorce they are likely to make a real difference in most cases and provide greater certainty. The negotiation and preparation of a pre-nup also means that the couple should be fully aware of each other's financial circumstances and expectations which is perhaps no bad thing when preparing for what both hope will be a lifetime commitment.

[GET IN TOUCH]

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DIFFERENT **DISCIPLINARY** TREATMENT COULD BE JUSTIFIED

A recent Employment Appeal Tribunal decision has shown that it is possible for an employer to treat employees differently in certain disciplinary situations.

In MBNA v Jones, two employees became involved in a kneeing, face-licking, punchy, text message-threatening exchange that began at their employer's 20th anniversary celebration at Chester racecourse.

What started as fun and banter escalated and led to one of the men losing his job for punching the other in the face at the employer-organised and branded event. The other employee, who had sent threatening texts once the men had left the event, was given a final written warning. Two employees, same episode, different treatment. Was the dismissal of the first fair?

No, said the tribunal. Both employees had committed acts of gross misconduct and there was unfair disparity of treatment. The Employment Appeal Tribunal overturned that decision. The dismissed employee had punched the other in the face at a work event at which staff had been told about the standards of behaviour expected of them. The other employee had later threatened to do something that he did not carry out. The more lenient treatment of the second employee did not make the dismissal of the first unfair; the decision wasn't wrong or outside the band of reasonable responses for the employer. The two men were disciplined for different things.

Therefore, even though consistency is important in disciplinary situations, it can be acceptable to treat employees caught up in one incident differently. However, the employer needs to tread cautiously. They need to be very clear about who did what, and about the sanction that's appropriate to their actions.

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