

## Update - Higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional dwellings and dwellings purchased by companies

### Where are we now?

The Government has now issued legislation further to the conclusion of its consultation as to how it will implement the Stamp Duty Land Tax (SDLT) Surcharge announced in the Spending Review and Autumn Statement 2015. The final form of rules differ significantly from the proposals set out in the consultation document.

Those replacing their main residence will be pleased to see that the window within which this must take place has been increased from 18 months to 36 months and will commence from 25<sup>th</sup> November 2015 for those who sold prior to that date.

However the test will be applied at the end of the day of the relevant transaction rather than when the SDLT return is submitted so the higher rate must be paid then reclaimed where the purchase completes marginally prior to the sale.

Unfortunately for large scale investors have not received any exemption; the consultation floated exclusions for both bulk purchases and purchases by those with an existing portfolio exceeding 15 residential properties.

Married couples and civil partners who are either legally separated or separated in circumstances that are likely to become

permanent will not be treated as one unit for the purpose of the higher charge.

Those holding a small share in an inherited property (50% or less consistently) received within 36 months of the relevant residential purchase will be pleased to see it is not to be taken into account but note spouses and civil partner's interests are aggregated for this purpose.

Those holding restricted use properties such as holiday lodges that cannot be occupied all year round and property renovators may be disappointed to hear that such properties will be treated in the same way as additional property purchases.

Bare trusts will be looked through as proposed. Beneficiaries of trusts who are entitled to occupy or receive income from the dwelling will be treated as the purchaser for the purpose of the surcharge. Otherwise the trustee is treated as the purchaser. Trusts with no beneficiary entitled to occupy or receive income will be treated in the same way as a company purchaser.

### What is it?

The higher rate ("the Surcharge") is 3 percentage points above the current SDLT rates and has effect from 1 April 2016 in respect of residential property in England Wales and Northern Ireland only. Broadly it

applies to purchases undertaken by individuals who already own other dwellings (and are not replacing a main residence) and purchases by any person who is not an individual.

### **Exclusions**

An individual purchaser will not have to pay the Surcharge where:

- 1) the purchase is for less than £40,000.00 or involves the acquisition of a lease granted for a term less than 7 years or the interest being purchased is subject to a lease with more than 21 years remaining at the date of purchase; or
- 2) or the other dwelling(s) they hold meet one of these criteria; or
- 3) they are replacing their main residence.

A company will only escape the Surcharge if the purchase is for less than £40,000.00 or involves the acquisition of a lease granted for a term less than 7 years or the interest being purchased is subject to a lease with more than 21 years remaining at the date of purchase.

### **Summary of the application of the Surcharge**

The net effect is that:-

- a. The Surcharge will apply where the purchaser holds two or more residential properties on completion of a given purchase unless they are replacing their main residence.
- b. Main residence – this is a question of fact rather than the subject of an election by the tax payer. The following factors will be relevant in determining this:
  - Where the individual and their family spends their time.
  - If the individual has children where they go to school.

- At which residence they are registered to vote.
- Where the individual works.
- The location and degree of furnishing and location of movable possessions.
- The correspondence and registration addresses given to various organisations.

A two stage test will apply; firstly whether a property sold was the only or main residence of the individual and secondly whether the purchaser of the new property intends to occupy it as their main or only residence. The test will be applied at the end of the day of the relevant transaction rather than when the SDLT return is submitted (i.e. if they are purchasing marginally prior to selling).

A refund mechanism (of the Surcharge only) applies for those who sell their current main residence within 36 months after purchasing the new one. This will commence from 25<sup>th</sup> November for those who sold prior to the above review. Where the purchase occurs before the sale and the sole/main residence rules are satisfied then the original purchase ceases to be a higher rate transaction and so an amended land transaction return must be filed within the later of 3 months from the effective date of the sale transaction or 12 months from the filing date for the return.

The main residence knock out requires that the purchaser dispose of a major interest in another dwelling within either the last 3 years or the next 3. A major interest for this purpose will exclude a leasehold interest with a term not exceeding 7 years on the date of grant and so terminating the tenancy of a property occupied as your main residence won't suffice.

Disposing of a dwelling outside England Wales and Northern Ireland counts as long as the parties' interest in that

property is equivalent under the law of the relevant country or territory.

To count as a dwelling a building must be used or suitable for use as a single dwelling or be in the process of being constructed or adapted for that use. Land that is or will be occupied or enjoyed with a dwelling as gardens or grounds is taken to be part of that dwelling.

Substantial performance of a contract constitutes the effective date of a transaction being the earlier of taking possession or paying 90% of the purchase price.

Only individuals can benefit from the replacement of main residence knock out.

Those separating should note that the main residence disposed of can only be used in connection with one subsequent purchase. So the benefit will be lost if the purchaser's spouse or civil partner has already acquired another main residence.

- c. Transitional arrangements – the higher rates will apply where completion takes place on or after 1 April 2016. They can only be ignored where contracts were exchanged on or before 25 November 2015 but not completed until after that time and the contract has not been varied or assigned amongst other things.
- d. Married couples and civil partners – they will be treated as one unit and so another property owned by either partner will be relevant when determining whether the higher charge applies. There are exclusions for those who are separated under a court order or by a formal deed of separation. Married couples who are living separately in circumstances that are likely to become permanent will not be treated as one unit for the purpose of the higher charge.

- e. Joint purchasers – they will be treated as one unit so another property held by one will be relevant. If three people purchase jointly if just one of them already owns a property (and they are not replacing their main residence) then the Surcharge will apply.
- f. Partnerships – partners receive special treatment when they jointly hold a dwelling for the purpose of a trade carried on by the partnership in that when a purchase is made by a partner that is not for the benefit of the partnership the dwelling so held by the partnership is ignored for the purpose of the Surcharge.
- g. Purchasing a property for children to live in – where the parents are the sole or joint purchaser then their existing residential property holdings will be relevant.

Only if they provide the cash for their child to purchase in their own name and the parents receive no interest in the property will the parents' holdings be irrelevant for this purpose. Parents considering proceeding in that way may wish to consider putting in place protective measures against the fallout from divorce for example.

- h. Global property holdings – whilst SDLT only applies to property purchased in England, Wales and Northern Ireland property owned anywhere in the world will be relevant in determining the application of the Surcharge.
- i. Inherited properties – whilst no SDLT is payable on inherited property the inherited property may be relevant in determining the application of the Surcharge; holding a small share in an inherited property (50% or less consistently through the period) received within 36 months of the relevant residential purchase will not to be taken into account. Spouses and civil partner's shares are aggregated for this purpose.

- j. Employer provided accommodation – this will not be relevant.
- k. Furnished holiday lets – these will be relevant in determining the application of the Surcharge.
- l. Caravans mobile homes and houseboat purchases – these are excluded from the Surcharge.
- m. Timeshare properties – most timeshare agreements are not subject to SDLT but if the agreement is subject to SDLT the Surcharge may apply.
- n. Companies and collective investment vehicles – the Surcharge will apply on the first purchase of a residential property by such entities so as to close off the potential tax avoidance opportunity that would otherwise present itself.
- o. Non-residential properties – the Surcharge will not be relevant to these and the definition of non-residential property is not being changed in this regard. A purchaser of non-residential property will not pay the Surcharge even if the property is later converted to residential.

The purchase of mixed use property (one with both residential and non-residential elements) and a purchase of six or more residential units in a single transaction continue to be treated as non-residential for SDLT purposes and so are not subject to the Surcharge.

Note that the charging structure and rates of SDLT for such property changed with effect from 17<sup>th</sup> March (save where contracts were exchanged prior in which case a choice exists) to introduce the progressive structure of charging that applies to income tax and SDLT for residential properties. The rates on premiums are 0% up to £150,000.00, 2% from that to £250,000.00 and 5% above that. Rates on rent have changed

too. The relevant policy paper states that for premium transactions worth less than £1.05 million and for rent transactions those with a NPV of up to £5 million the same level of SDLT will be payable as under the previous system.

- p. Multiple residential property purchases – Multiple dwelling transactions will be caught by the higher rate where the main subject matter of the transactions consists of a major interest in two or more dwellings and in respect of at least two of them the chargeable consideration is £40,000.00 or more and the reversionary lease knock out mentioned above doesn't apply.

Where those conditions are met in respect of one of the dwellings and the replacement of only/main residence knock out doesn't apply in respect of it then both transactions will be caught.

Others(i.e. corporates) will be hit by the higher charge for multiple dwellings where at least one of the transaction is for £40,000.00 or more and the subject lease knock out doesn't apply.

Note that multiple dwellings relief is to continue to apply albeit subject to the Surcharge and so needs to be considered where more than one residential property is being purchased.

It should be borne in mind that claw-back provisions apply in this regard and that treatment may be more favourable under the alternative method of charging applicable where six or more residential properties are being purchased in the same transaction mentioned above (i.e. on a non-residential basis).

- q. Social landlords and charities – the Surcharge will not apply in circumstances in which exemptions would usually apply.
- r. Treatment of large scale investors – there are no exemptions for them.



- s. Trusts and settlements – purchases by Trustees of bare trusts will continue to be treated as if they were made by the beneficial owner.
- t. Bare trusts will be looked through as proposed. Beneficiaries of trusts who are entitled to occupy or receive income from the dwelling will be treated as the purchaser for the purpose of the surcharge. Otherwise the trustee is treated as the purchaser. Trusts with no beneficiary entitled to occupy or receive income will be treated in the same way as a company purchaser.
- u. Lease extensions - The legislation does not provide specific exemption for lease extensions and so flat owners extending their leases may have to pay the surcharge. That means that they may have SDLT to pay at 3% despite the premium being within the ordinary SDLT threshold of £125,000.00.

Ordinary SDLT is payable in relation to lease extensions where either the premium or net present value of the rent exceeds £125,000. The SDLT surcharge will apply unless the flat owner benefits from one of the following four knock outs:

- Firstly, the premium paid for the lease extension must be £40,000 or more for the surcharge to apply.
- Secondly if the lease is taken subject to a lease which has an unexpired term of more than 21 years it will not be caught by the surcharge; taking the new lease in the same name as you hold the existing lease will not bring you within this knock out. To potentially achieve that your existing lease would need to have more than 21 years left to run as at completion and you would need the landlord's co-operation for a third party to take a new lease (that will be subject to your existing lease) and careful

thought would need to be given to this.

- Thirdly at the end of the day of completion for the surcharge to apply the owner (or one of the owners, if a joint purchase) must own another dwelling that has a market value of £40,000 or more and which is not subject to a lease which has an unexpired term of more than 21 years.
- Fourth the surcharge will not apply if the purchased dwelling is a replacement for the purchaser's only or main residence. Unfortunately it does not appear to be the case that you will benefit from this knock out if the flat you are obtaining a lease extension in respect of is already your main residence (and another property is held).

On this note again acquisitions by a company will be caught on first purchase. They do not benefit from the main residence exclusion.

- v. There are provisions to deal with interests held by children under the age of 18.
- w. Since issuing the draft legislation and further to the consultation the Government has changed the rules relating to the purchase of a house that includes a "granny flat" or annex.

This followed criticism that many houses with small annexes would be liable for a 3% surcharge on Stamp Duty. The new rules are designed to ensure that fewer homes with annexes will be liable for the surcharge. Any annex that is worth less than one third of the total property value will no longer qualify for the extra charge.

To be liable for the higher rate, annexes must also:

- Be capable of being sold separately from the main house
- Have their own entrance
- Have their own water and electricity supply
- Receive their own Council Tax bill
- Be worth more than £40,000 on their own.

Where a home with an annex or cottage does qualify for the Stamp Duty surcharge, the higher rate applies to the value of the whole property, not just the annex.

### Conclusion

This is only intended as a summary. As ever with tax issues it is a complex area and the answer will depend on the particular facts and circumstances of the tax payer. Therefore specialist advice needs to be taken rather than relying on this note.

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