

# Autumn Statement 2015 - Higher Rates of SDLT for purchases of additional residential properties

In the Autumn Statement the Chancellor announced higher rates of SDLT for purchases of additional residential properties, such as second homes and buy-to-let, coming into effect from 1 April 2016. The higher rates will be 3% above the current SDLT rates, payable on the total price paid for the property.

The government said it would be consulting on the policy design, including the treatment of particularly difficult cases, for example those purchasing in advance of the sale of a previous main residence, and the exemption for corporates and funds. That consultation was published on 28 December and can be read [here](#).

It is a long document (20+ pages) with numerous examples so it is impossible in a brief e-mail to capture all the nuances. However, the main points to emerge are as follows (noting that as this is a consultation, the final rules may end up different):

1. The policy objective is to deliver low-cost home ownership for first-time buyers. The introduction of higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties is aimed at helping that by reducing demand for second homes and using some of the additional tax collected to provide £60 million for help and affordable housing in communities in England where the impact of second homes is particularly acute.
2. The higher rates will apply to most purchases of additional residential properties in England, Wales and Northern Ireland where, at the end of the day of the transaction, individual purchasers own two or more residential properties and are not replacing their main residence. Scotland has introduced its own, separate land transaction tax and it is understood they will copy this policy.
3. The higher rates will also generally apply to purchases of residential property by companies. The government says the vast majority of transactions, such as first

time buyers purchasing their first property or home owners moving from one main residence to another will be unaffected. The most common scenario in which purchasers will pay the higher rates is where they are purchasing a buy-to-let or second home in addition to their main home.

4. At the Autumn Statement 2014, the government radically reformed SDLT on residential properties. Previously, the system operated on a 'slab' structure, whereby tax was due at one percentage rate on the entire property value. This was reformed to a structure where each new SDLT rate is payable on the portion of the value which falls within each band, like income tax.

Band	Existing residential SDLT rates	New additional property SDLT rates
£0* - £125k	0%	3%
£125k - £250k	2%	5%
£250k - £925k	5%	8%
£925k - £1.5m	10%	13%
£1.5m +	12%	15%

*\*Transactions under £40,000 do not require a tax return to be filed with HMRC and are not subject to the higher rates.*

5. The higher rates will apply to purchases of additional residential properties where, at the end of the day of the transaction, individual purchasers own two or more residential properties and are not replacing their

main residence. Breaking this down, this means the higher rates of SDLT are not payable:

- i. if purchasing 'non-residential' property – see further para 16 below
  - ii. if purchasing 'residential' property but at the end of the day of the transaction the purchaser owns one property;
  - iii. If purchasing 'residential' property, at the end of the day of the transaction the purchaser owns two or more residential properties, but the new property is replacing his/her 'main residence' (so you can own ten buy to let properties and not pay the higher rates on a new residential purchase as long as you are replacing your main residence with that purchase. Individuals will not be able to elect which of their residences is their main residence. The government's view is that any elective treatment for SDLT may reduce uncertainty but it would be open to abuse and on balance is not justified. Instead, the government proposes that whether a property is a main residence will be based on fact – see further para 15 below).
  - iv. If purchasing 'residential' property, at the end of the day of the transaction the individual owns two or more residential properties, but the new property is a new 'main residence' where the individual has sold a previous main residence within 18 months before the day of the transaction.
6. If a person purchases a new main residence before having sold his current main residence, then the higher rates will apply to the new purchase but if the former main residence is then sold within 18 months of the transaction, the person may claim a refund of the higher rate.
  7. If a person owns a buy to let but then purchases an additional property to be his/her main residence, the higher rates will apply to the new purchase even though it is to live in as the person is not 'replacing' his main residence in this example.
  8. Property owned globally will be relevant in determining whether a property purchased in England, Wales or Northern Ireland is an additional property. This means that if someone is purchasing their first or only property in England, Wales or Northern Ireland, they may pay the higher rates if they own property outside these areas. This rule will be important to Scottish and overseas buyers of residential property.

It also does not matter how the person came to own the first property – e.g. if it is inherited.

9. Married couples and civil partners who own one property at the end of the day of a transaction will not pay the higher rates of SDLT. However, if either of them owns more than one residential property they may pay the higher rates when purchasing another property. The government will treat married couples and civil partners living together as one unit.
10. Joint purchasers - Similarly, the government proposes that if, at the end of the day of a transaction, any of the joint purchasers has two or more properties and is not replacing a main residence, the higher rates will apply to the entire consideration for the transaction. This provides simplicity and aligns with other areas of the tax system. However, as the purchased property may be a first property for one or more of the joint purchasers, the government is keen to hear from respondents as to whether this is the fairest outcome.
11. The higher rates will only apply to purchases of additional residential property which complete on or after 1 April 2016. If contracts are exchanged after 25 November 2015 then the higher rates will apply if the purchase is completed on or after 1 April 2016. However, if contracts were exchanged on or before 25 November 2015 but not completed until on or after 1 April 2016, the higher rates will not apply.
12. The SDLT system currently includes exemptions for some residential property purchases made by charities and registered social landlords. It is not the government's intention to bring either charities or registered social landlords into the higher rates of SDLT in circumstances in which they would usually be exempt.
13. **The treatment of large scale investors**

The new higher rates of SDLT form part of the government's overall housing strategy including support for home ownership. The higher rates of SDLT are therefore intended to apply to the vast majority of circumstances where individuals or companies and other non-natural persons purchase additional properties, which can impact on other people's ability to get on the housing ladder. However the government is aware that some purchases of additional properties can positively contribute to an overall increase in housing supply and support the government's wider housing strategy, helping to facilitate the development and quality of the housing stock across tenure types. Given the potential positive

impacts some significant developments can have, the government says an exemption from the higher rates of SDLT targeted at some forms of investment in property may be justified.

The Autumn Statement indicated the government's initial view was that any exemption from the higher rates would only apply to corporates and funds (such as companies, and pension and collective investment schemes) who have an existing residential property portfolio of at least 15 properties at the time of a transaction. Since then, the government has considered that there may be circumstances where significant investment by individual purchasers may positively contribute to development and the government's housing objectives in the same way as investment by corporate purchasers, and so there may be circumstances in which it is justified to exempt purchases made by individuals from the higher rates. Comments are invited on this.

The government are considering a number of alternative methods to deliver this exemption: e.g. rather than designing an exemption by reference to the purchaser's existing property portfolio it may be more appropriate to target an exemption based on the bulk purchase of at least 15 residential properties, on the basis that bulk purchases are more likely to provide significant sources of finance and development certainty to a project. Comments on this have been invited too.

#### 14. **The first purchase of a residential property by a company or collective investment vehicle**

Where an individual purchases their first residential property the higher rates will not apply. If the government mirrored this treatment for purchases made by companies and collective investment vehicles this would create a potential tax avoidance opportunity. In particular, an individual could purchase an additional property via a company to avoid the higher rates of SDLT.

To guard against this avoidance risk the government proposes that the first purchase of a residential property by a company or collective investment vehicle is subject to the higher rates of SDLT (subject to the final decision on the treatment of significant investors as discussed in para 13 above). This proposal is likely to be controversial as SPVs holding property on an asset by asset basis is quite common to deliver limited liability and ring-fencing. If owners of 15 or more properties are exempted from the charge, it is hoped that properties held within a corporate

group would count towards that total rather than looking on an individual SPV by SPV basis.

#### 15. **Main Residence – Factual Test:**

- As stated above, whether a purchase/sale is of a 'main residence' will be important in this new regime and it is to be a factual test. HMRC say they will take into account a number of factors when considering whether a given property is an individual's main residence. These will include:
- where the individual and their family spends their time;
- if the individual has children, where they go to school;
- at which residence the individual is registered to vote;
- where the individual works;
- the location and degree of furnishing and location of moveable possessions; and
- the correspondence and registration addresses given to various organisations.

#### 16. **Definition of Residential Property**

As stated above, the higher rates of SDLT will only apply to purchases of "residential property". The definition of residential property and non-residential property will not change due to the introduction of these higher rates. This means that a purchaser of a non-residential property will never pay the higher rates of SDLT, even if it is later converted into residential property.

Non-residential property includes:

- commercial property (such as shops or offices);
- agricultural land;
- bare land (even where that land may subsequently be used for residential purposes);
- forests;
- any other land or property which is not used as a residence;
- 6 or more residential properties bought in a single transaction; and
- A mixed use property (one with both residential and non-residential elements).

Mixed use transactions, that is the purchase of residential and non-residential properties together in a

single transaction, is currently considered a non-residential transaction for SDLT purposes. The government does not intend to change that treatment.

The top rate of SDLT on non-residential properties is 4% on the entire purchase price (i.e. the 'slab' system applies).

#### 17. Treatment of multiple residential property purchases

Where multiple residential properties are purchased in a single or linked transaction, that transaction is eligible for multiple dwellings relief (MDR). Under MDR, the residential rates of SDLT are applied to the average price of each property (multiplied by the number of properties purchased) rather than applying to the entire transaction value. This brings the total SDLT due closer to the amount that would be due if the same properties had been purchased separately. Where 6 or more residential properties are bought together, the purchaser can choose whether to apply the non-residential rates of SDLT (to the entire transaction value – current top rate of 4% on the entire purchase price) or to choose the residential rates of SDLT with MDR applied.

The government intends to retain this system for the purchase of multiple residential properties.

#### 18. Interaction with Higher Rate of SDLT for Enveloped Dwellings charge

Currently the purchase of residential property over £500,000 in a corporate/non-natural person vehicle attracts a 15% SDLT charge on the entire purchase price (i.e. on the 'slab' system). It is thought that this rule will still apply first and only if it does not apply, do you need to go on to consider the above additional rate rules. Buy to let is currently exempt from this 15% charge and this should remain the case. However, owner-occupied property is potentially within the scope of this higher charge: so second homes bought in a corporate wrapper over £500k are already subject to this higher 15% charge.

**This consultation will run from 28 December 2015 to 1 February 2016. The government will consider all responses before confirming the final policy design at the Budget on 16 March 2016. The higher rates will apply from 1 April 2016.**

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