

The 3% Higher Rates of SDLT for purchases of additional residential properties and corporate purchasers

Higher rates of SDLT will apply to purchases of additional residential properties, such as second homes and buy-to-let, and to corporate purchasers, coming into effect on and after 1 April 2016. The higher rates will be 3% above the current SDLT rates, payable on the total price paid for the property.

Key highlights

- Higher rate of SDLT – 3% above current SDLT rates
- Applies to "residential" property only (not commercial or mixed-use property)
- Comes into effect on and after 1 April 2016 (limited grandfathering)
- Applies where individuals own 2 or more residential properties at the end of the day of the transaction
- Special rules for individuals replacing main residences
- No exemption for purchases by corporate SPVs – surcharge payable even if no other property owned by company
- No exemption for bulk purchases or funds

The government announced in the Autumn Statement 2015 the proposal to introduce a higher rate of SDLT targeted at buy-to-let and second homes. It consulted on the details earlier in the year and has confirmed the final rules are to be as follows (largely ignoring many concerns raised by Industry during the consultation):

1. 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 (as defined – see para 16 below) and are not replacing their main residence.
2. The higher rates will also apply to all purchases of Residential Property by companies, even if the company owns no other property. 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 individual purchasers will pay the higher rates is

where they are purchasing a buy-to-let or second home in addition to their main home.

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.*

3. Different rules apply to 'individual' and 'non-individual' (e.g. Corporate) purchasers.

Purchasers who are Individuals

4. The higher rates will apply where, at the end of the day of the transaction, individual purchasers own two or more relevant 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 a relevant interest in another dwelling (see para 5 below), 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, 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 a relevant interest in another dwelling (see para 5 below), but the new property is a new 'main residence' where the individual has sold a previous main residence within 36 months before the day of the transaction.
5. In assessing whether an individual acquires an 'additional' property, one needs to look at what property interest(s) the individual holds (and retains) on the day the additional Residential Property is purchased – does he/she already own a relevant interest in another dwelling? A relevant interest in another dwelling is a freehold or leasehold interest in a dwelling with a market value of more than £40,000 and which is not subject to a lease which has more than 21 years to run at the date of purchase of the new dwelling and, if a leasehold interest, was originally granted for a term of more than seven years. Each dwelling owned at the end of the day should be looked at separately for the £40k condition; several interests below this value which add up to more than £40k will not cause this condition to be met.
6. If an individual purchases a new main residence before having sold his current main residence, then assuming this is an additional property purchase, the higher rates will apply to the new purchase but if the former main residence is then sold within 36 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 still have to pay the higher rates if they own a relevant interest in another dwelling outside these areas – the test in para 5 would need to be adapted to see if the interest held abroad by the purchaser is equivalent. 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. However, it is noted that there are special circumstances in which inherited "small shares" in a single residential property (50% or less) may not be subject to the higher rate.
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 is treating married couples and civil partners living together as one unit, but married couples and partners will not be treated as one unit if they are either legally separated (by court order or deed of separation) or they are, in fact, separated in circumstances in which the separation is likely to be permanent.
10. Joint purchasers - Similarly, the new rules provide 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. In the case of dwellings held by partners in partnerships, there are special rules in which the additional rate may not apply.
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 may not apply depending on whether grandfathering requirements are met; in this regard, care needs to be taken to not inadvertently lose grandfathered status for pre-26 November uncompleted contracts.

12. The SDLT system currently includes exemptions for some residential property purchases made by charities and registered social landlords. These continue to apply.

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 and 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.

The 2015 Autumn Statement indicated the government was considering an exemption from the higher rates for 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.

However, the government has concluded, after weighing up factors such as the corresponding overall effect on housing supply not being material and housing development still remaining attractive for corporate investors, that there will be no exemption of any kind for significant investors. In fact, the higher rates are now to apply even to the purchase of a first property by a non-individual purchaser (see 14 below).

14. The first purchase of a Residential Property by a company or collective investment vehicle

The new rules provide that the first purchase of a Residential Property by a company or collective investment vehicle is subject to the higher rates of SDLT.

The original rationale for a rule of this type was anti-avoidance: 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.

A surcharge on corporates acquiring Residential Property could have been focussed on closely-held

corporates to combat this mischief. In the event, the surcharge applies to even the first acquisition of Residential Property by a non-individual/corporate. The government has indicated that the rationale for this is simply that the policy is to encourage first-home ownership for individuals and thus there is no need to grant a non-individual any tax break.

During the consultation phase, there was discussion that purchases of 15 or more properties would get an exemption. In the event, as the (often lower) non-residential rate of SDLT can apply to purchases of 6 or more dwellings in one transaction (as well as the availability of MDR – see 17 below), the government felt there was no need for any further exemptions.

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 for the purposes of the surcharge

The higher rates of SDLT will only apply to purchases of certain types of residential property in defined circumstances; specifically, the purchase must be of a "major interest" in a single "dwelling" where the chargeable consideration is £40,000 or more and the dwelling is either not subject to a lease, or if it is, that lease has 21 years or less to run on the date of purchase.

For the purposes of this surcharge:

- a "major interest" is a freehold or leasehold interest but not a leasehold interest if the lease was originally granted for a period of seven years or less;

- a "dwelling" is defined as building or part of a building that is used or suitable for use as a single dwelling, or is in the process of being constructed or adapted for use as a dwelling. An off-plan purchase can count as a "dwelling" in certain circumstances.

Non-residential property which is excluded from this charge 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).

The purchase of non-residential properties is subject to the non-residential rates of SDLT which were also recently reformed in the March 2016 Budget (see [Budget briefing on new rates](#)).

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**). The higher rates will apply to claims for MDR. However, 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 (see [Budget briefing on new rates](#)) or to choose the residential rates of SDLT with MDR applied.

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). This rule will still apply in priority to the surcharge discussed in this briefing and only if it does not apply, do you need to go on to consider the surcharge rules. Buy-to-let is exempt from this 15% charge but owner-occupied property is potentially within the scope of this higher charge: so owner-occupied second homes bought in a corporate wrapper over £500k are already subject to this higher 15% charge.

The additional rate surcharge will apply on and after 1 April 2016.

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