

SDLT Factsheet

Higher rates for additional properties

The rules surrounding the rates of SDLT for additional properties are complex and confusing. This factsheet outlines the various conditions which determine whether or not the higher rates apply when purchasing a residential property.

Since 1 April 2016, an additional set of SDLT rates applies for purchases of certain residential properties. These rates increase the SDLT due by the equivalent of 3% of the purchase price. It is the circumstances of the purchaser(s) that determine whether the higher rates apply.

If the purchaser is an individual, the higher rates will apply if **all** of the following four conditions are met:

Condition A – the chargeable consideration for the new dwelling is at least £40k. Consideration can come in many forms, including cash, taking on responsibility for a mortgage or exchanging one property for another;

Condition B – the new dwelling is not subject to a lease which has more than 21 years to run on the date of purchase;

Condition C – the purchaser owns a major interest in another dwelling which has a market value of at least £40k and which is not subject to a lease which has more than 21 years to run at the date of the purchase of the new dwelling; and

Condition D – the dwelling being purchased is not replacing the purchaser's only or main residence.

Where a dwelling is bought by joint purchasers, their positions must be considered individually. In addition, the conditions must be tested against the purchaser's spouse or civil partner, even if he/she

is not taking an interest in the property. If any of the purchasers would be liable to the higher rates of SDLT, the whole transaction is charged at the higher rates.

If the purchaser is a company, the higher rates will apply if conditions A and B are met. Conditions C and D are not relevant.

Condition C – Owning a major interest in another dwelling

There are a number of special rules for determining whether a purchaser owns a major interest in another dwelling.

Inherited property

The purchaser can ignore any property that he/she has inherited within the last three years provided that the combined interest of the purchaser and their spouse does not exceed 50% of the inherited property.

Partnerships

Partnership property can be ignored when a partner makes a private purchase provided that the partnership property is used for the purposes of the partnership trade. (HMRC has confirmed that a property letting business is not a trade.)

Trustees and nominees

A purchaser can ignore any property in which they do not have a beneficial interest (a right to use, control or derive income from the property). Conversely, a purchaser must consider any property in which they have a beneficial interest, even if they are not the legal owner.

Property within a bare trust is treated as belonging to the beneficiary. Property in an interest in possession or life interest trust is treated as belonging to the life tenant.

Any property owned by parents can be ignored where trustees make a purchase on behalf of a child under a relevant Court Appointment.

All dwellings purchased by a discretionary trust will be subject to the higher rates of SDLT.

Spouses, separation & divorce

From 29 October 2018, the 3% surcharge does not apply to transfers between spouses and civil partners.

If married couples / civil partners have separated in circumstances that are likely to be permanent, they no longer have to treat their spouse as a co-purchaser of any property that they subsequently buy. However, it is likely that the purchase of a new home will be within the higher rates if they retain a stake in the ex-marital home, unless this stake was required under a property adjustment order on their divorce.

Condition D - Replacing a main residence

In order to replace a main residence - and therefore fail condition D - a purchaser must

- intend the new property to be their sole or main residence, and
- dispose of a major interest in a dwelling that has been the previous sole or main residence at some point within the three years ending with the new purchase

A 'major interest' is defined as a freehold or a lease for an agreed term of more than 7 years. Terminating a standard AST rental agreement will not count as a disposal of a major interest unless the initial agreement was for a term of at least 7 years.

The disposal must occur within three years of the purchase of the new dwelling. If the disposal occurs after the purchase, the higher rates of SDLT must be paid initially but can then be reclaimed.

A disposal of a dwelling owned by the purchaser's spouse or civil partner will be treated as a disposal made by the purchaser. However, the purchaser

must have lived in the property as a sole or main residence in order for the new purchase to be deemed to be a replacement main residence.

If either the purchaser or their spouse/civil partner retain any interest in the former main residence, the purchaser will not be treated as replacing their main residence.

Purchase of a further interest in a main residence

Where an individual buys a further interest in their main residence, e.g. via a lease extension, then the 3% surcharge will not apply, as long as they have occupied their home for at least 3 years.

Purchases of 2 or more dwellings in a single transaction

It is not possible to split consideration so that part of a transaction is charged at the higher rates of SDLT and part is not. If any of the purchased properties fall within the higher rates, the whole transaction will be subject to the additional 3% tax.

However, the purchase of 6 dwellings in a single transaction continues to be treated as a non-residential transaction and is therefore not within the higher rates. Similarly, mixed use transactions also continue to be taxed under the non-residential rates of SDLT.

In limited circumstances, a second dwelling will be deemed to be 'subsidiary' to the main dwelling and will not bring the transaction within the higher rates. This occurs if the second dwelling is in the same building as the main dwelling or is in the immediate grounds of the main dwelling and two thirds of the value of the transaction is attributable to the main dwelling. This rule may be relevant where a property has a 'granny annex' or where a groundkeeper's cottage exists in the grounds of a large estate.



Judith Pederzoli
Director
jpederzoli@pem.co.uk



Sarah Davis
Director
sdavis@pem.co.uk



Salisbury House
Station Road
Cambridge CB1 2LA

t. 01223 728222
e. pem@pem.co.uk



A member of Kreston International | A global network of independent accounting firms