

## Second Home SDLT Surcharge: An Update

The Autumn Statement 2015 included a commitment to charge higher rates of Stamp Duty Land Tax (“**SDLT**”) on purchases of additional properties, such as buy-to-let properties in England, Wales and Northern Ireland, and second homes from 1 April 2016.

The Consultation on this measure was published on 28 December 2015 and runs from that date until 1 February 2016 with confirmation of the final design to be announced at the Budget on 16 March 2016. It is generally recognised this is a short period in which to introduce such a significant change.

### 1. Overview

The changes will 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, although 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.

- 1.1 In short, the new rules are that if you already own a residential property then when you buy any further residential properties there will be a 3% surcharge on top of the normal SDLT rate on each one, unless the new property is replacing your existing main residence. The Consultation contemplates some relief for those who do not enter into a simultaneous completion on a sale and purchase of a main residence.
- 1.2 Purchases under the existing £125,000 threshold, which is subject to a nil rate of SDLT, will be subject to the new 3% rate from April 2016. There is a de minimis of £40,000 which is not helpful in today's market. It is also worth noting that this surcharge will not apply to non-residential property, or mixed use property.
- 1.3 It is further confirmed that if this is your first purchase regardless of the intended use of the property then the surcharge will not apply (unless you are a trust or a company or a fund).

The proposed rates are as follows:

<b>Band</b>	<b>Existing residential SDLT rates</b>	<b>New additional property SDLT rates</b>
£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 at HMRC and are not subject to the higher rates.

Further significant issues are highlighted as follows:

## 2. Replacement main residence

- 2.1 The Consultation indicates that ownership of a second home, or one or more buy-to-let properties, will not adversely affect the rate of SDLT payable on the purchase of a new main residence, provided that the owners sell their existing home within a period of 18 months before or after the purchase of the new property. In the case of a purchase that precedes the sale of the old home, SDLT will be payable at the higher rate, but the excess may be reclaimed if the old home is sold within the 18 month period.
- 2.2 It is currently proposed that the relevant date for determining the number of properties owned will be the date on which completion occurs. However, the Consultation seeks views on whether the due date for payment of the SDLT should instead be taken as the relevant date to avoid claims for repayment of SDLT where there is only a short term timing difference between the purchase of a replacement main residence and the sale of the old one.

### 3. Married Couples and Civil Partners

A husband and wife, or members of a civil partnership, are entitled to only one main residence between them. If either (or both) of the parties already owns a property before they buy one jointly, the new property will be subject to the higher rate of SDLT unless the existing property (or properties) was previously used as a main residence and is sold within 18 months of the purchase. However, provided that former residences are sold, the retention of additional properties will not affect the rate of SDLT payable.

### 4. Trusts and Settlements

Discretionary Trusts, both UK resident and non-UK resident, will nearly always be liable to the surcharge, even if the Trust is making a first purchase. If the Trust has an interest in possession in favour of a particular beneficiary then if that beneficiary does not own another residential property the surcharge will not apply. With most non-UK resident Trusts being discretionary in nature, trustees will need to give consideration to granting interests in possession where possible. Purchases by trustees of bare trusts will continue to be treated as if they were made by the beneficial owner and there will be no difference in treatment compared to the beneficial owner purchasing themselves.

### 5. Companies and Funds

First purchases by companies and funds will always be subject to the surcharge as HMRC has identified a risk that people might otherwise use companies/funds to avoid the surcharge.

### 6. Joint Purchasers / Partnerships

The current plan is to levy the surcharge on the whole value of a property even if only one of the joint purchasers (or in the case of a partnership, only one of the partners) has an existing property, although the government have invited comment on this in the Consultation.

## 7. Foreign Purchasers

Even if you are a non-UK resident you will still be subject to the new rules, so if your main residence is in Spain and you purchase your first property in the UK, then the surcharge is intended to bite. As indicated in paragraph 11.1 below, the Consultation has expressed the intention that the responsibility for providing the correct information will be with the purchaser, how this will work in practice has yet to be decided.

## 8. Inherited Properties

A gift of a property to someone who already holds a residential property will not be subject to the surcharge on the basis there is broadly speaking no SDLT on gifts.

## 9. Purchasing Properties for Children

The 3% surcharge will apply to purchases made by parents for their children to live in, unless such a purchase can be structured as a loan or through the use of an interest in possession Trust rather than in joint names.

## 10. Substantial Investors

It is recognised by the government that large scale investment in residential property may benefit the housing market but no conclusion has been reached over such investors, although those who already have 15 residential properties, whether companies or individuals, may be exempt. It is understood though that Multiple Dwellings Relief (“MDR”) will continue so any purchaser who acquires 6 or more residential properties in one transaction can choose to apply the non-residential rate (4%) or take the average cost of each unit and apply the normal residential rates. In most cases you would apply the non-residential rates, unless the average value of each unit is below £250,000.

## 11. Administration and Compliance

### 11.1 Changes to SDLT Return

The SDLT return is to be amended to provide an additional box for purchasers to indicate that the property they are buying is an additional property and liable to SDLT at higher rates. The Consultation indicates the intention that responsibility for providing the correct information will be with the purchaser, but HMRC is conscious that conveyancers will need assistance in obtaining the correct response and, for example, whether a purchaser is correct about which property has been their main home.

### 11.2 Penalties

If SDLT is underpaid as a result of a mistake that is either careless or deliberate, penalties up to 100% of the underpaid tax may be payable.

With the changes being introduced from 1 April 2016, there are still significant areas of uncertainty. Identifying second homes, particularly in the case of foreign purchasers, may be particularly difficult under the new rules although it has to be welcomed that the Consultation recognises that the ultimate responsibility for the accuracy of an SDLT return will remain with the purchaser. A formal declaration to be given by the purchaser will no doubt assist here.

The issues raised in this Briefing Note are complex and advice should be sought at the earliest opportunity.

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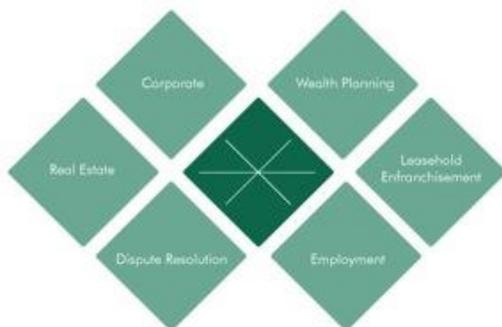
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