

3% supplementary rate for SDLT

(Lecture P1165 – 15.19 minutes)

The normal rates for residential property transactions are shown below but for transactions where completion takes place on or after 1 April 2016, there is a 3% supplement when buying a second residential property unless one of the narrow exceptions applies. The 3% is added to all rate bands (including the 0% band) other than the 15% anti-avoidance rate.

Relevant consideration	Normal rate	Supplement rate
Up to £125,000	0%	3%
> £125,000 but ≤ £250,000	2%	5%
> £250,000 but ≤ £925,000	5%	8%
> £925,000 but ≤ £1.5 million	10%	13%
The remainder	12%	15%
> £500,000 and acquired by a non-natural person (subject to exemptions)	15% (on whole consideration)	15%

The higher rate will apply to the purchase of a major interest in one or more dwellings where the conditions are met. A major interest is, broadly, a freehold or leasehold interest in land but the new legislation explicitly excludes a leasehold interest if the lease was originally granted for a period of 7 years or less. It is not the amount of lease which is left; it is the original length of the lease.

For the purposes of the higher rates a dwelling is defined as 'a building or part of a building that is used or suitable for use as a single dwelling, or in the process of being constructed or adapted for use as a dwelling'.

The gardens and grounds of the dwelling or land that is to be enjoyed with the dwelling (including buildings), for example, a detached garage, are taken to be part of the dwelling as is land that subsists (or is to subsist) for the benefit of a dwelling, but a transaction in such a building or land without the purchase of the actual dwelling will not be liable to the higher rates. This does mean that land without a dwelling on it (even if there is planning permission to build a house on it) will not normally attract the higher rates.

'Dwelling' takes its everyday meaning. This means it is any building, or a part of a building that affords those who use it the facilities required for day-to-day private domestic existence. In most cases there should be little difficulty in deciding whether or not particular premises are a dwelling. Holiday homes and furnished holiday lettings clearly fall within the definition of a dwelling.

For the purposes of the higher rates an off-plan purchase will also count as dwelling where the following conditions are met:

- contracts have been exchanged for the purchase of a building, or part of building, which is to be constructed or adapted for use as a single dwelling,
- the contract is substantially performed, and
- at the time of substantial performance the construction or adaptation of the building has not yet begun.

It will be important in some cases to determine whether a premises consists of one or more than one dwelling. This will always be a question of fact.

The original legislation contained no relief in situations where 'granny flats' were part of a bigger overall dwelling but an announcement was made whilst the legislation was going through Parliament that the provisions would be amended. A property will form part of a 'single sale transaction' where:

- the annexe is in the same grounds as the main property
- will have all the facilities of a main home
- is not worth more than one third of the total cost of the transaction value

The higher rate will not apply to purchases of non-residential or mixed-use properties; transactions where the consideration is less than £40,000 and caravans, houseboats and mobile homes. The 15% rate for enveloped dwellings will take priority too.

Conditions

The higher rate will apply to a major interest in a single dwelling by an individual if at the end of the day of the purchase Conditions A to D are met:

- Condition A is that the consideration is £40,000 or more. This is not a nil rate band; if the consideration is more than £40,000 the higher rate applies to the whole of the consideration.
- Condition B is that the dwelling is not subject to a lease which has more than 21 years to run on the date of purchase.
- Condition C is that the purchaser owns a major interest in another dwelling which has a market value of £40,000 or more and is not subject to a lease which has more than 21 years to run at the date of purchase of the new dwelling.
- Condition D is that the dwelling being purchased is not replacing the purchaser's only or main residence.

A new exception was introduced by FA2018 where the purchaser had a major interest in the dwelling immediately before the effective date of the transaction and the property had been the only or main residence throughout the period of three years ending with the effective date of the transaction. Effectively this means that the supplementary charge is not relevant where a person is increasing their interest in a property as long as that is their main residence.

It does not apply where the purchaser is a joint tenant and there are more than three other joint tenants or if they are entitled to less than a quarter of the prior interest as a tenant in common.

Also, where a person (A) has a major interest in land but a property adjustment order has been made in respect of the interest for the benefit of another person (B) which is B's main residence (and not A's) then A is not treated as having that interest for the purposes of this Schedule. There is a specific definition of what constitutes a property adjustment order. It covers such things as Mesher orders or similar to enable a spouse to remain in property after a divorce, often to protect the position of minor children.

Points to note:

- In Condition C, the £40,000 is the value of the interest owned by the purchaser and not the total value of the dwelling but also includes a valuation of any associated land. If there is more than one interest all valued at less than £40,000 the condition is not met even if the total exceeds £40,000. It includes land outside the UK.
- Condition D is that the purchased dwelling is not a replacement of the purchaser's only or main residence. There are two parts to a replacement of a purchaser's main residence: there must be a disposal of the purchaser's or their spouse or civil partner's previous main residence, and the dwelling acquired must be intended to be occupied as the individual's only or main residence.
- There are two situations in which a purchase of a dwelling will be a replacement of a main residence. The first is where the disposal occurred before, or on the day of the purchase. The second is where the purchase happens first and then the disposal happens later.
- There is a replacement of a main residence if, in the three years ending with the purchase, the purchaser disposed of a major interest in another dwelling and that other dwelling was, at some time in the three-year period, the only or main residence of the purchaser.
- There is also a replacement of a main residence if in the three years ending with the purchase, the purchaser's spouse or civil partner disposed of a major interest in another dwelling and that other dwelling was, at some time in the three-year period, the only or main residence of the purchaser. Changes in FA2018 mean that you cannot meet this condition by selling to your spouse or civil partner.
- The three-year period for this test will not be applied for purchases on or before 26 November 2018. This is a transitional provision so as not to disadvantage those whose last disposal of a main residence was before the announcement of the higher rates on 25 November 2015. It is only the first acquisition of a new main residence that is treated as a replacement, so if two purchase transactions are entered into within three years of a disposal (or on or before 26 November 2018), only the first acquisition of a new main residence is a replacement.
- Renting a new main residence in the time between disposal and purchase will not prevent the purchase from being a replacement of a main residence unless the period of the tenancy agreed is more than seven years.

- Where an individual is a legal and beneficial owner of an interest they will own that interest for the purposes of Condition C, but there are a number of other situations in which an individual will be treated as owning an interest in another dwelling including:
- Where an individual has absolute beneficial ownership of an interest in land but legal ownership is held by another person (as in a bare trust or nominee arrangement)
- Where the beneficiary of the trust would be absolutely entitled but for being under age or disabled in a way that prevents them from being legally capable of owning property
- Where a minor child would be treated as owning an interest in land because they are the absolute beneficiary of a trust, the parents of that child (and, if the parents are not married to one another, the spouses or civil partners, if any, of those parents) are treated for the purposes of Condition C as owners of the interest
- Where a dwelling is owned by another person subject to a trust that gives the individual a right to occupy the dwelling for life or the right to the income earned in respect of the dwelling, the individual is treated as owning the interest. This treatment will not apply to interests in dwellings that are trust property of a trust that gives the trustee a discretion to apply income between a class of beneficiaries or a trust which accumulates income.

Joint purchases and spouses/civil partners

Where a transaction is entered into by joint purchasers, the higher rates will apply if the transaction would be a higher rate transaction for any of the purchasers considered individually. So if there are two individual purchasers and Conditions A to D are all met for one of them only, the transaction will be charged at the higher rates. This rule applies whether an interest in a dwelling is purchased as joint tenants or tenants in common. It does not matter how small the interest of a particular purchaser is, the test is applied in the same manner.

Where an individual with a spouse or civil partner purchases an interest in a dwelling and their spouse or civil partner is not a joint purchaser, the spouse or civil partner will be treated as a joint purchaser in respect of the transaction. This means that where a purchaser is married or in a civil partnership, if Conditions A to D are met by either spouse or civil partner, the transaction will be a higher rates transaction.

The transaction will not be a higher rate transaction if there is one purchaser and one vendor and they are married or civil partners (as long as they are living together). Also, where there are two purchasers and one of them (P) is also the vendor, then P is to be treated as if they are not a purchaser (and vice versa if there are two vendors and one purchaser). However, you cannot sell the property to your spouse to trigger a disposal for the purposes of the main residence relief.

Inherited interests

Following the death of an individual, the beneficiaries of their estate may become entitled to a major interest in a dwelling. Where a person becomes entitled to such an interest in the three years before a chargeable transaction, the interest can be ignored provided that:

- the beneficiary became a joint owner of the interest by inheritance,
- the beneficiary and any spouse or civil partner's combined interest has not exceeded half of the major interest in the three years before the effective date of the chargeable transaction.

The date of inheritance for these purposes is the date that the individual becomes entitled to the interest that is normally the date when the interest is transferred to them although it could be the date that the residue is ascertained if earlier. Note this might be different if the property is another jurisdiction.

Purchases of two or more dwellings

Where an individual purchaser purchases two or more dwellings in the same transaction, different tests determine whether the transaction is liable to the higher rates of tax. A transaction involving more than one dwelling will either be liable to the higher rates of tax or it won't, the rules do not allow for a single transaction to be a combination of higher and normal residential rates.

The same basic conditions have to be considered but in a slightly different way. Condition A is also modified so that it says that the consideration attributable to the dwelling on a just and reasonable basis is £40,000 or more.

Firstly if none of the interests in dwellings purchased meet both conditions A and B the higher rates will not be applicable (with joint purchasers then you consider the tests in the context of both of them). The example of a situation where this might apply is the purchase of a freehold over a block of flats where all flats are subject to long leases.

If two or more dwellings purchased in the same transaction meet conditions A and B then it will be a higher rate transaction.

If only one dwelling meets conditions A and B, then the transaction is a higher rate transaction if the dwelling meets conditions C and D.

Purchases by companies and trusts

The higher rates will apply to the purchase of major interests in one or more dwellings by a company, if Conditions A and B are met in respect of at least one of the dwellings:

- Condition A - the dwelling purchased is worth £40,000 or more;
- Condition B - the dwelling is not subject to lease which has more than 21 years to run on the date of purchase;

Purchases by trustees are treated differently depending whether the trustee is the trustee of a bare trust, a trust with life or income interests or any other trust.

Where there is a bare trust or an individual has a life interest, it is the position of the beneficiary which needs to be considered when determining if the conditions are met. For a discretionary trust, it is the trustees and they are treated as if they are a company i.e. conditions A and B have to be met.

Examples

Individual who is married and been living in rented accommodation while wife has rental property in Glasgow but has not lived there for 10 years. Buying property and this will be liable to the 3% supplement.

Married couple who own a flat as their main residence. They are wanting to buy the flat above which they will then integrate into their main residence to make a bigger property. This will be liable to the 3% supplement.

Individual bought property with the intention of living in it and paid higher rate as she had not sold her main residence, although that was what she planned. She sold her main residence but did not apply for a refund. She has now jointly purchased a property with her new partner and paid the higher rate and they are going to live in it as their main residence. She could claim a refund for the higher rate on the new property purchased.

Contributed by Ros Martin