

What's new?

Alastair Morrison and Rose-Anna Higgins consider the details of the increased stamp duty land tax burden for buyers and their advisers



Alastair Morrison is a partner and Rose-Anna Higgins is a senior associate in the real estate department of Burges Salmon LLP

George Osborne's 2016 Spring Budget introduced a number of changes that will affect UK real estate, which are set out in the box at the top of p8.

Stamp duty land tax reform on commercial and mixed-use properties

The new system

On and after 17 March 2016 stamp duty land tax (SDLT) will be charged at the new rates shown (see box at the bottom of p8) on a 'slice' rather than 'slab' system on that portion of the purchase price or lease premium that falls within each rate band. For rent, a 2% rate will be applied to the net present value (NPV) in excess of £5m. If contracts were exchanged on or before budget day on 16 March 2016 with completion or substantial performance after that day, under transitional provisions taxpayers can choose to apply the old or new rates, whichever produces less tax. These provisions do not apply if that contract has been varied, assigned or on sub-sales, nor to the exercise of an option, right of pre-emption or similar right granted before 17 March 2016.

Winners and losers

Freehold and lease premium transactions worth less than £1.05m will pay the same SDLT or less compared to the previous system. Above that level it is more expensive. For rent, leases of which the NPV is up to £5m will pay the same in SDLT as before; over that sum, more SDLT will be due.

£1,000 rule

For transactions on or after 17 March 2016 any premium due

under a lease will benefit from the 0% rate of SDLT, whatever the rental figure. The existence of this rule was probably overlooked on many occasions and could be a trap, bringing low-value transactions within the ambit of SDLT where neither the rent nor the premium taken on their own would exceed the nil-rate band. Its removal is welcome.

Holding over and renewal leases

Calculating the SDLT where tenants continue in occupation after expiry of their lease, and the renewal of those leases, will now be further complicated by whether the original lease was granted or expired before or after 17 March 2016, as well as by:

- whether it was contracted out of the Landlord and Tenant Act 1954;
- whether it expired after 17 July 2013 (when the rules on overlap relief changed);
- whether it was varied at all during the holding over; and
- when the term of any renewal lease was expressed to commence.

The changes add a further layer of complexity to calculating SDLT correctly in circumstances where the cost of doing so was already often excessive in relation to the amount of tax due.

Linked transactions

The method of calculating SDLT where the new rules apply to any

'The method of calculating stamp duty land tax (SDLT) where the new rules apply to any one or more of linked transactions has changed, owing to the move from a slab to a slice system of charging.'

one or more of linked transactions has changed, owing to the move from a slab to a slice system of charging. Rather than simply applying the rate applicable to the aggregate consideration to each linked transaction, it is necessary to work out what fraction of the aggregate consideration that transaction represents. The SDLT on the transaction is that fraction of the SDLT which would be due at the new rates on the aggregate consideration.

3% surcharge for additional residential property

From 1 April 2016, if at the end of the day on which a buyer completes the purchase of a major interest in a dwelling:

- the buyer owns a major interest worth more than £40,000 in another dwelling; and
- the purchase is not replacing a main residence,

then, unless either dwelling is subject to a lease with more than 21 years unexpired, the higher rate (see '3% surcharge' in the box above) potentially applies. This is an extra 3% on top of the normal rates for residential property. Any interest in a dwelling worth less than £40,000 does not attract the higher rate. If the value is more than £40,000 the higher rate will apply to extend the rates so that the value slice of a dwelling of up to £125,000 will be taxed at 3%. The rates are set out in the table on p9.

The changes in outline

Reform of rates and rules for stamp duty land tax (SDLT) on commercial and mixed-use properties

A surprise announcement in the Budget was a change in the calculation of SDLT on the price paid for non-residential property, along with a new 2% rate for rent where the net present value (NPV) of the rent is above £5m. In addition the '£1,000 rule', which disapplied the 0% rate on non-rent consideration of up to £150,000 for a lease if the rent exceeded £1,000 per annum, has been abolished.

3% surcharge for additional residential property

In the Autumn Statement the Chancellor announced a higher rate of SDLT (the higher rate) for purchases of additional residential properties such as second homes and buy-to-let. Details of the rules were set out with the Budget and the higher rate applies from 1 April 2016, although there are transitional provisions that apply to unvaried contracts exchanged before 25 November 2015, the date of the Autumn Statement.

Major interest

A major interest for the purposes of the higher rate includes all freeholds. However, it only includes leaseholds if the lease was originally granted for a period of seven years or more. So, a lease that was originally granted for 100 years which only has only four years left to run counts as a major interest. A lease originally granted for six years does not.

Dwelling

The definition of dwelling is a building or part of a building which is used or suitable for use as a single dwelling, or is in the process of being constructed or adapted for such use. It also includes gardens and grounds which are to be occupied or enjoyed with the dwelling, and land that subsists for the benefit of the dwelling. Dwellings include

holiday homes (even if they cannot be used year-round) and furnished holiday lettings, but do not include caravans, houseboats and mobile homes. Off-plan purchases can also fall within the definition of dwelling.

Mixed-use property is outside the higher rate tax and will be taxed as non residential (and so subject to the new rates and changes to the regime for commercial and mixed-use property).

At present, there is some doubt about whether the residential rate or the mixed-use rate applies where, for example, there is business use either within the dwelling itself or in gardens or grounds, and HMRC is currently consulting on the topic. The higher rate of SDLT makes the provision of detailed guidance on what comprises a dwelling even more important.

Existing ownership

It will often be obvious that a purchaser legally and beneficially owns an interest in another dwelling. But an individual may be treated as owning an interest in an existing dwelling if it is held as a nominee for the individual or if they are the beneficiary of a trust and would be absolutely entitled but for being underage or disabled in a way that prevents them from being legally capable of owning the property. Similarly, where a minor child would be treated as owning an interest in land because they

New stamp duty land tax rates

Transaction value	Rate
£0 – £150,000	0%
£150,001 – £250,000	2%
£250,000+	5%

Net present value of rent	Rate
£0 – £150,000	0%
£150,001 – £5,000,000	1%
£5,000,000+	2%

are the absolute beneficiary of a trust, the parents of that child are treated as owners of the interest.

Where a dwelling is owned by another person subject to a trust for a beneficiary who has the right to occupy for life or the right to income (a life tenant), the life tenant is treated as owning the interest. This does not apply to discretionary beneficiaries.

Main residence

The higher rate will not apply if the purchased dwelling is a replacement of the purchaser's only or 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 is no definition of 'main residence' but HMRC guidance published with the Budget sets out a number of points they consider might be useful in identifying an individual's main residence.

Where the disposal of a main residence occurs before, or on the same day as, the purchase of the 'second' residence, the higher rate does not apply. Where the purchase of the second residence happens first and the disposal later, the higher rate is due but a refund may be claimed when the main residence is sold within 36 months of the purchase of the second residence. It can be claimed by making an amendment to the original return within three months of the sale of the previous main residence, or within one year of filing that return, whichever is later. A specific SDLT repayment request form is now available from the gov.uk website. HMRC tell us that they aim to process all repayments within 15 working days of receiving all the information that they require.

The replacement within 36 months test will not be applied for purchases on or before 26 November 2018, to avoid disadvantaging those whose last disposal of a main residence

was before the announcement of the higher rates on 25 November 2015. So if you buy a second property on or before 26 November 2018, and have sold a main residence in, say, 2010 which your newly acquired property replaces, you will benefit from relief from the higher rate.

Joint purchasers, spouses and civil partners

Where a transaction is entered into by joint purchasers, the transaction can be a higher rate transaction for *any* of the purchasers considered

or in fact separated in circumstances where the separation is likely to be permanent). So if one member of the couple has disposed of a main residence, but the other has not, the higher rate will apply. Simply because it will be a replacement of a main residence for one does not mean that it is replacement for both, and so the higher rate applies.

Non-UK land

A non-UK dwelling owned by an individual is treated as ownership of an existing dwelling.

The higher rate will not apply if the purchased dwelling is a replacement of the purchaser's only or main residence.

individually and it does not matter how small the interest of a particular purchaser is. So, if A and B buy a property which is an additional property for B, but B only has a 0.1% interest in the property, it is still subject to the additional rate.

Where there is a single purchaser, but the purchaser is married or in a civil partnership, the transaction will attract the higher rate if conditions A to D in the box on p11 are met by either spouse or civil partner. (This does not apply if a married couple is either legally separated

Individual purchases of two or more dwellings

There are separate rules that apply when an individual purchaser purchases two or more dwellings in the same transaction. (NB: there is no blanket exemption for large-scale investors. The exemption for buyers of more than 15 dwellings suggested in the pre-Christmas consultation was not implemented.)

A transaction involving more than one dwelling will either be liable to the higher rate of tax or it will not. The rules do not allow for a single transaction to be a combination of higher and normal residential rates.

New stamp duty land tax rates for additional residential property

Purchase price of property	Rate paid on portion of price within each band
Up to £125,000	3%
Over £125,000 and up to £250,000	5%
Over £250,000 and up to £925,000	8%
Over £925,000 and up to £1,500,000	13%
Over £1,500,000	15%

The same four conditions in the box on p11 are relevant to the purchase of two or more dwellings in a single transaction, save that Condition A is modified to read (emphasis added):

... the *portion of the chargeable consideration for the transaction*

satisfied, the higher rate will be payable. The first test is whether *all* of the dwellings being purchased meet conditions A and B. If so the higher rate applies.

This creates a trap for anyone who buys two (or more) properties together where one is in fact to be

different tax outcomes in such circumstances.

If, however, not all of the purchased dwellings meet conditions A and B, then you go on to the second test. This considers whether only *one* of the dwellings meets conditions A and B. If it does, then you go on to consider whether it meets conditions C and D. If so, then the test is satisfied and the higher rate is payable. If not, it is not.

A transaction involving more than one dwelling will either be liable to the higher rate of tax or it will not. The rules do not allow for a single transaction to be a combination of higher and normal residential rates.

which is attributable on a just and reasonable basis to the purchased dwelling is £40,000 or more.

There are then two tests which apply these conditions and if one of these two tests is

their main residence, as main residence relief may well not be available, even if the buyer has sold a main residence within 36 months and so, quite reasonably, could expect to get relief. Staggering the purchases and the order in which they take place can create

Purchase by a company and 15% charge for 'non-natural persons'

A company will pay the higher rate if it buys a dwelling for more than £40,000 which is not subject to a lease of 21 years or more. There is no condition that the company is buying a second or further property and the concept of a main residence does not apply.

The supplemental 3% rate does not apply to acquisitions of residential property for over

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£500,000 by non-natural persons that are subject to the 15% SDLT rate. However if a company buys a dwelling for over £500,000 but is not subject to the 15% rate because an exception applies (property business, farmhouse etc) the transaction may be a higher rate transaction with the effect that any consideration in excess of £1,500,000 is subject to the 15% higher rate on that slice. (If the 15% rate for non-natural persons applied, it would apply to the whole of the chargeable consideration.)

Partnerships

Although HMRC deem a partner to be identified with the ownership of the underlying property, this principle does not apply to the higher rate. Provided a partner buys a dwelling for a purpose other than for the purpose of the partnership, the property owned by the partnership is disregarded when considering whether the purchasing partner owns an interest in an existing property. But it is only disregarded if the partnership is a trading partnership.

Trustees

Purchases by trustees are treated differently depending on whether they are the trustee of a bare trust, a life interest trust or a discretionary (or other) trust. If a trustee holds as nominee, the trust is ignored since ownership is deemed to lie with the beneficial owner. When a trustee of a life interest trust purchases a dwelling, the purchaser is deemed to be the life tenant, so you look to see whether conditions A to D are satisfied by the life tenant. Where a purchaser is the trustee of a discretionary trust, the trustee is liable to the higher rate as if it was a company purchaser. So there is no requirement for the trustees to own an existing property. The higher rate will apply on the acquisition, by discretionary trustees, of the first property.

Inherited interests

An interest in a dwelling owned by an individual is disregarded if:

- it was inherited in the three years before the acquisition of the second dwelling; and

- throughout that time the beneficiary of the inheritance (and any spouse or civil partner of that beneficiary) does not have a (combined) interest which exceeds half of the major interest in that inherited dwelling.

Multiple-dwellings relief

Where two or more dwellings are purchased in a single or linked

No longer can solicitors (who are normally the tax advisers for residential SDLT) rely on a generic approach. From now on each buyer needs to be individually assessed for this tax and extra time needs to be invested at an early stage in deciding how SDLT will apply.

Sellers are affected too; unless the property can be steered into the 'mixed-use' category (for instance with the addition of commercial

The supplemental 3% rate does not apply to acquisitions of residential property for over £500,000 by non-natural persons that are subject to the 15% SDLT rate.

transaction, multiple-dwellings relief can be claimed. The higher rates apply for multiple-dwellings relief. Where six or more dwellings are purchased in a single transaction, the purchaser can choose whether to apply the non-residential rates of SDLT.

The adviser's burden

Not only has the 2016 Budget significantly increased the SDLT burden for those buying or leasing higher value commercial or mixed-use property and for a number of residential purchasers, but it has made new demands on their SDLT adviser.

farmland in the rural setting or business premises for urban dwellings), then no reassurances can be given by selling agents as to the SDLT to be suffered by the buyer.

The SDLT position on all commercial transactions ongoing at Budget day will have to be revisited to consider how or if the transitional provisions apply and the SDLT recalculated at the new rates.

The changes to SDLT in this Budget represent a new high-water mark in the growing tide of tax-collecting and public-policy responsibilities being placed on the shoulders of advisers such as solicitors. ■

When will the higher rate of tax on an additional property apply?

The higher rates will apply only if at the end of the day of purchase of a dwelling all four conditions are met (described in the draft legislation as 'Conditions A, B, C and D'):

Condition A: the chargeable consideration is £40,000 or more.

Condition B: the dwelling is not subject to a lease which has more than 21 years to run at the date of purchase.

Condition C: the purchaser owns an 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: the dwelling being purchased is not replacing the purchaser's only or main residence.