

---

**Stamp duty land tax: Higher rates for purchases of  
additional residential properties**

---

Guidance Note  
November 2016

---

<b>Contents</b>		<b>Pages</b>
Chapter 1	Overview	3
Chapter 2	The higher rates	4-7
Chapter 3	Individual and joint purchasers purchasing a single dwelling	8-17
Chapter 4	Purchases of two or more dwellings by individuals	18-19
Chapter 5	Companies and Trusts (including interaction with multiple dwellings relief)	20-22
Chapter 6	Filing and amendments	23-24
Chapter 7	Transitional rules	25
Chapter 8	Questions and answers	26-32
Chapter 9	Further examples	34-38

## Chapter 1: Overview

At Autumn Statement on 25 November 2015, the Chancellor of the Exchequer announced that higher rates of stamp duty land tax (SDLT) would apply from 1 April 2016 to purchases of additional residential properties, such as second homes and buy-to-let properties.

The legislation passed into law as Schedule 4ZA of Finance Act 2003 as inserted by section 128(3) of the Finance Act 2016.

A calculator is available on the GOV.UK website which calculates the amount of SDLT due on purchases of additional residential properties: <https://www.tax.service.gov.uk/calculate-stamp-duty-land-tax>.

This guidance supersedes similar guidance titled 'Stamp Duty Land Tax: higher rates for purchases of additional residential properties', published on 16 March 2016.

## Chapter 2: The higher rates of SDLT

---

### Higher rates

2.1 Where applicable, the higher rates will be 3% above the standard rates of SDLT that apply to purchases of residential property. Each rate will apply to the portion of the consideration that falls within each rate band<sup>1</sup>:

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%

2.2 For example, the SDLT due on a purchase of buy-to-let property for £300,000 that is liable to the higher rates would be £14,000, calculated as follows:

Charge	SDLT due
3% on the first £125,000 =	£3,750
5% on the next £125,000 =	£6,250
8% on the final £50,000 =	£4,000
<b>Total SDLT due =</b>	<b>£14,000</b>

### What the higher rates apply to

2.3 Where applicable, the higher rates will apply to purchases of major interests in one or more dwellings<sup>2</sup>.

2.4 For the purposes of the higher rates a major interest does not include a leasehold interest if the lease was originally granted for a period of 7 years or less<sup>3</sup>.

#### *Example 1*

A leasehold interest originally granted for 100 years but with only four years left to expiry will be treated as a major interest in land for the purposes of the higher rates' rules.

A leasehold interest originally granted for four years with all four years left to run will not be treated as a major interest in land for the purposes of the higher rates' rules.

---

<sup>1</sup> Para 1(2) Sch 4ZA FA 2003 (all references are to this schedule unless otherwise stated)

<sup>2</sup> Paras 3(1)(b), 4(b), 5(1)(b), 6(1)(b) and 7(b)

<sup>3</sup> Para 2(4)

2.5 For the purposes of the higher rates a dwelling is defined<sup>4</sup> 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.

2.6 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, but a transaction in such a building or land without the purchase of the actual dwelling will not be liable to the higher rates.

*Example 2*

An individual buys a plot of garden land from their neighbour. The purchase does not include an interest in one or more dwellings. The higher rates will not apply.

2.7 “Dwelling” takes its everyday meaning; that is a 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.

2.8 The following are dwellings:

- holiday homes, including those which cannot be used all year round, and ● furnished holiday lettings.

2.8A Depending on its nature purpose-built student accommodation is treated as either residential or non-residential property for the purposes of SDLT. The purchase of such accommodation is not liable to the higher rates and owning such a property will not cause you to be within the higher rates on a subsequent purchase<sup>5</sup>. This only applies to purpose built student accommodation and not an ordinary house or flat for students to live in.

2.9 For the purposes of the higher rates an off-plan purchase will also count as a dwelling where –

- 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.

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

2.10A It is a question of fact whether a purchase consists of one or more than one dwelling. A self-contained part of a building will be a separate dwelling if the

---

<sup>4</sup> Para 18

<sup>5</sup> Para 18(7)

residents of that part can live independently of the residents of the rest of the building including independent access and domestic facilities.

2.10B In certain cases a purchase of more than one dwelling will be treated the same as if a single dwelling had been purchased. This is the case if any of the dwellings purchased are subsidiary dwellings. A subsidiary dwelling must be within the same building as or in the grounds of another dwelling purchased in the same transaction (the principal dwelling). The principal dwelling and the garden and grounds attributable to that principal dwelling must be at least two thirds of the value of the land purchased in the transaction.

2.10C There can be more than one subsidiary dwelling purchased at the same time as a principal dwelling, but the principal dwelling must always be at least two thirds of the transaction value.

2.10D Where a principal dwelling is purchased and all the other dwellings purchased are subsidiary dwellings, the tests for whether the transaction is a higher rates transaction are applied as if there was only one dwelling purchased. If the purchase of a principal dwelling is a first property purchase or a replacement of a main residence the higher rates will not apply. Here, and at paragraph 2.10B, multiple dwellings relief may be claimed for separate dwellings.

2.10E If a purchaser has paid the higher rates of SDLT and, as a result of the introduction of the subsidiary dwelling rules, believes they have overpaid, they can claim a refund from HMRC. Guidance on how to claim a refund is available on GOV.UK at: <https://www.gov.uk/guidance/stamp-duty-land-tax-online-returns>.

### **When the higher rates will not apply**

2.11 The higher rates will not apply to purchases of:

- non-residential or mixed use properties;
- transactions where the consideration is less than £40,000<sup>6</sup>; and ● caravans, houseboats and mobile homes<sup>7</sup>.

2.12 The higher rates will not normally be charged on purchases that are charged at the 15% rate for purchases of higher threshold interests in dwellings by companies. However, where such a transaction includes a chargeable interest that is not a higher threshold interest, the deemed separate transaction in those interests<sup>8</sup> may be subject to the higher rates if the purchase of those remaining interests meets the conditions.

---

<sup>6</sup> Paras 3(2), 4(c), 5(2), 6(1)(c) and 7(1)(c)

<sup>7</sup> These assets are usually chattels and any payment in respect of the plot is usually for a license, they are therefore not usually chargeable to SDLT. If a moveable asset such as this becomes sufficiently fixed to the

<sup>8</sup> Para 2(3) Sch 4A FA2003

land that it becomes part of the land then we would no longer consider it to be a caravan, mobile home or houseboat. In such cases, the resulting building or structure may be a dwelling if it meets the normal definition.

## Chapter 3: Individual and joint purchasers buying a single dwelling

---

### Individuals – purchase of single dwelling

3.1 The higher rates will apply to the purchase of a major interest in a single dwelling by an individual, if at the end of the day of purchase Conditions A to D are met<sup>9</sup>:

- *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 on the date of purchase;
- *Condition C* - 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; and
- *Condition D* - the dwelling being purchased is not replacing the purchaser's only or main residence.

3.2 If any of Conditions A to D are not met the higher rates will not apply to the purchase.

### Individuals – purchase of a single dwelling – Condition A

3.3 Condition A is that the chargeable consideration for the purchase of a single dwelling must be equal to or more than £40,000 for the transaction to be a higher rates transaction<sup>10</sup>.

3.4 The £40,000 is not an allowance or a 0% tax band, if the chargeable consideration is equal to or more than £40,000 then the relevant higher rates apply to the whole chargeable consideration.

### Individuals – purchase of a single dwelling – Condition B

3.5 Condition B is that the interest in the dwelling purchased is either not subject to a lease or, if it is subject to a lease, the lease has no more than 21 years to expiry at the date of the transaction<sup>11</sup>.

3.6 A purchase of a freehold or leasehold interest that is subject to a lease with more than 21 years remaining will not be chargeable at the higher rates.

### *Example 3*

---

<sup>9</sup> Para 3(1)

<sup>10</sup> Para 3(2)

<sup>11</sup> Para 3(3)



- A freehold subject to a lease with 80 years left to expiry will not meet Condition B.
- A leasehold with 80 years to expiry that is subject to a lease with 15 years to expiry will meet Condition B.

### **Lease Extensions**

3.6A The extension of a lease usually takes the form of a surrender of the existing lease by the leaseholder and payment of a sum in return for the grant of a fresh lease. For SDLT purposes, only the payment for the lease extension is taken into account in determining the chargeable consideration. Where the new lease has a term of more than 7 years and the amount paid is at least £40,000, SDLT will be chargeable at the higher rates if Condition C and Condition D [where a purchaser is not replacing their main residence] are met in respect of a purchaser.

### **Individuals – purchase of a single dwelling – Condition C**

3.7 Condition C is that the individual purchaser owns, or is treated as owning, a major interest in another dwelling at the end of the day that is the effective date of the transaction. That major interest must have a market value of more than £40,000 and not be reversionary on a lease with more than 21 years until expiry<sup>12</sup>.

3.8 An interest in a dwelling is a major interest if it is a freehold or leasehold interest<sup>13</sup> and, if it is a leasehold interest, was originally granted for a term of more than seven years<sup>14</sup>.

3.9 The interest in the dwelling owned by, or treated as owned by the purchaser must have a value of £40,000 or more at the date of the transaction. The valuation is the market value of the interest owned, or treated as owned by the individual in the dwelling. Loans related to the dwelling, such as mortgages, are ignored when calculating market value.

3.10 The land that has to be valued is the dwelling building itself, the garden or grounds (including buildings and structures in the garden or grounds) and any other land that subsists for the benefit of the dwelling<sup>15</sup>.

3.11 Each dwelling owned at the end of the day should be looked at separately for the £40,000 or more condition, several interests below this value which add up to £40,000 or more will not cause Condition C to be met.

3.12 The interest held at the end of the day must be an interest in another dwelling<sup>16</sup>. A further interest owned in the same dwelling in which a major interest has been purchased will not, on its own, cause Condition C to be met.

---

<sup>12</sup> Para 3(4)

<sup>13</sup> Section 117 FA 2003

<sup>14</sup> Para 2(4)

<sup>15</sup> Para 18

<sup>16</sup> Para 3(4)(a)

- 3.13 If an individual is a joint owner of another dwelling then they may meet Condition C if the interest in land is a major interest not subject to a lease longer than 21 years and the interest that they hold is worth £40,000 or more.
- 3.13A Where an individual is one of the legal owners of another dwelling (their name is on the title at the Land Registry) but they have absolutely no beneficial interest in that other dwelling, they will not own an interest in that other dwelling that meets Condition C. This would have to be evidenced in writing. Any entitlement to capital proceeds from the sale of the property, to income or to occupy the property would be likely mean that they do have a beneficial interest.
- 3.14 An individual who is a partner in a partnership will be treated as owning a major interest in a dwelling if a major interest is held by or on behalf of the partnership<sup>17</sup>, but see special rules below for trading partnerships.
- 3.15 An interest in a dwelling outside of England, Wales and Northern Ireland is to be counted for the purposes of Condition C<sup>18</sup>. Other legal systems will often have different land law concepts and it is a question of fact whether an interest owned by an individual is equivalent to a major interest and whether it is for a term of more than seven years and not subject to a lease of more than 21 years<sup>19</sup>.
- 3.15A An individual holding a mixed residential and non-residential property will meet Condition C if the property contains a dwelling. A self-contained flat above a shop or public house with separate access will normally be a dwelling, separate from the commercial premises below, it doesn't matter that they may have been purchased in the same transaction. The test for what is a dwelling is at 2.7 above and applies to self-contained parts of a building as well as whole buildings.

### **Individuals – purchase of a single dwelling – Condition D**

- 3.16 Condition D is that the purchased dwelling is not a replacement of the purchaser's only or main residence<sup>20</sup>.
- 3.17 There are two parts to a replacement of a purchaser's main residence:
- there must be a disposal of a major interest in the purchaser's or their spouse or civil partner's previous main residence<sup>21</sup>, and
  - the dwelling acquired must be intended to be occupied as the individual's only or main residence<sup>22</sup>.
- 3.17A The major interest in the previous main residence must have been owned by the purchaser. The purchaser must have disposed of either the freehold of the previous main residence or a lease which had a term of more than 7 years when it was granted. Terminating a shorthold tenancy would not count as a disposal of a previous main residence for the purposes of Condition D.

---

<sup>17</sup> Para 2 Sch 15 FA 2003

<sup>18</sup> Para 17(1)

<sup>19</sup> Para 17(2)(a)

<sup>20</sup> Para 3(5)

<sup>21</sup> Paras 3(6)(b) and (c) and 3(7)(b) and (c)

<sup>22</sup> Paras 3(6)(a) and 3(7)(a)

3.18 The disposal of the previous main residence does not have to be by way of sale, although that is likely to be the case for most individuals. For example the property may have been gifted to someone else or transferred under a court order as part of a divorce settlement.

3.19 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<sup>23</sup>. The second is where the purchase happens first and then the disposal happens later<sup>24</sup>.

3.19A For purchases on or before 26 November 2018, there is a replacement of a main residence if, at any time before the purchase, the purchaser, or their spouse or civil partner, disposed of a major interest in another dwelling<sup>25</sup> and the purchaser has not purchased another main residence in the period between that disposal and the new purchase. That other dwelling must have been, at some time, the only or main residence of the purchaser<sup>26</sup>.

3.20 For purchases on or after 27 November 2018, 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<sup>27</sup> and that other dwelling was, at some time in the three year period, the only or main residence of the purchaser<sup>28</sup>.

3.21 For purchases on or after 27 November 2018, there is also a replacement of a main residence if in the three years ending with the purchase if -

- the purchaser's spouse or civil partner disposed of a major interest in another dwelling
- the disposal of the other dwelling occurred sometime in the three years period, and
- that other dwelling was, at some time in the three year period, the only or main residence of the purchaser.

3.23 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<sup>29</sup>.

3.24 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<sup>30</sup>.

---

<sup>23</sup> Para 3(6)

<sup>24</sup> Para 3(7)

<sup>25</sup> Para 3(6)(b)

<sup>26</sup> Para 3(6)(c)

<sup>27</sup> Para 3(6)(b)

<sup>28</sup> Para 3(6)(c)

<sup>29</sup> Para 3(6)(d)

<sup>30</sup> Para 2(4)

- 3.25 There is a replacement of a main residence if, at the time of a purchase, the transaction was a higher rates transaction and in the subsequent three years, the purchaser sells a previous main residence<sup>31</sup>. The previous main residence must have been the main residence of the purchaser at some time during the three years before the purchase of the new main residence<sup>32</sup>.

*Example 4*

An individual buys a dwelling and intends it to be her main residence. The effective date of the transaction is 31 May 2019. If she had previously sold a dwelling at any time on or since 1 June 2016 then the purchase may be a replacement of a main residence. The dwelling she disposed of would have had to have been her only or main residence at some time during the period 1 June 2016 to 31 May 2019. She must not have acquired another new main residence after the disposal and before the purchase.

If the individual had purchased her new dwelling on 31 May 2018 then the three year time limits would not apply. The dwelling previously disposed of by her must have been her only or main residence at some time. She still must not have acquired another new main residence after the disposal and before the purchase.

- 3.26 There is also a replacement of a main residence if, at the time of a purchase, the transaction was a higher rates transaction and in the subsequent three years, the purchaser's spouse or civil partner sells a previous main residence. The previous main residence must have been the main residence of the purchaser at some time during the three years before the purchase of the new main residence.
- 3.27 In the case of a disposal of a previous main residence following a purchase of a new main residence, the land transaction return will have been made based on the higher rates of tax, unless the disposal happened before the date on which the land transaction return must be submitted. In such a case the land transaction return should be completed as if the higher rates do not apply. The additional tax paid as a result of the transaction being a higher rates transaction can be reclaimed after the subsequent sale by amending the return<sup>33</sup>. See Chapter 6 on filing and amendments.

*Example 5*

An individual purchases a new main residence on 30 April 2018 and retains his freehold in the previous main residence at the end of the day of purchase whilst seeking a sale. He meets Condition C. He has not previously sold a main residence, so meets Condition D when he purchases his new main residence. The transaction is charged at the higher rates. If he sells his previous main residence at any time during the period to 30 April 2021, then the purchase will cease to be a higher rates transaction and the purchaser can amend his SDLT return and claim back the higher rates tax paid.

---

<sup>31</sup> Para 3(7)(b)

<sup>32</sup> Para 3(7)(c)

<sup>33</sup> Para 8(3)

3.28 If a disposal of a main residence following a purchase causes a previous purchase to cease to be a higher rates transaction, then that disposal cannot be taken into account when deciding if a later purchase is a replacement of a main residence<sup>34</sup>.

3.29 Various interests not owned by an individual are treated as being owned by them, similarly, if those interests are disposed of, the individual will be treated as having disposed of them for the purposes of determining if a purchase is a replacement of a main residence, see below under the section on interests treated as being owned by an individual.

### **Individuals – What is a main residence?**

3.30 In cases where an individual resides at only one dwelling, that will be their only or main residence.

3.31 Where an individual resides at more than one dwelling, all of the facts and circumstances of the particular case must be considered in order to conclude which residence is the main residence. The rules do not allow an individual to nominate which dwelling is their main residence.

3.32 The main residence is not necessarily the residence where the individual spends the majority of their time, although it commonly will be. This question was considered in the case of *Frost v Feltham* (55TC10) and the High Court decision in this case sets out a useful summary of the criteria to be applied. Nourse J comments in the decision,

*If someone lives in two houses the question, which does he use as the principal or more important one, cannot be determined solely by reference to the way in which he divides his time between the two.*

3.33 The following list of points to consider, although not exhaustive, may be useful in establishing which residence is an individual's main residence,

- If the individual is married or in a civil partnership, where does the family spend its time?
- If the individual has children, where do they go to school?
- At which residence is the individual registered to vote?
- Where is the individual's place of work?
- How is each residence furnished?
- Which address is used for correspondence?
- Where is the individual registered with a doctor / dentist?
- At which address is the individual's car registered and insured?
- Which address is the main residence for council tax?

3.35 The test for the old dwelling is a question of objective fact, was the dwelling at some point in a period the only or main residence of the individual who disposed of it?

---

<sup>34</sup> Para 8(2)

3.36 The test in respect of the new dwelling purchased is a question of intention, does the purchaser intend the dwelling to be his only or main residence? This is a question of intention at the time of purchase, what has the purchaser acquired the property for? The intention test will not only be met if there is an intent to immediately occupy, if some works are to be undertaken before occupation commences, or a short lease is in place before purchase, then this does not prevent the test from being met. If the dwelling is intended to be put to other uses, for example as a source of income, then the intention test will not be met. There may be rare cases of the purchaser's genuine intention at the time of purchase being frustrated by events.

### **Individuals – interests treated as being owned by an individual**

3.37 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.

3.38 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) the individual with beneficial ownership is treated for the purposes of Condition C to own that interest<sup>35</sup>. This also applies 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.

3.39 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<sup>36</sup>.

3.40 Similar treatment applies to an interest in land outside of England, Wales or Northern Ireland owned directly by an individual under the age of 18 (where that is allowed). In this case, the parents of that child (and, if they are not married to one another, the spouses or civil partners of those parents) are treated for the purposes of Condition C as owners of the interest<sup>37</sup>.

3.41 Where a dwelling is owned by another person subject to a trust which 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<sup>38</sup>. This treatment will not apply to interests in dwellings which 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 purchasers, Married Couples and Civil Partners – Special rules**

---

<sup>35</sup> Para 3 Sch 16 FA 2003 and para 11(2) and (3) Sch 4ZA FA 2003

<sup>36</sup> Para 12

<sup>37</sup> Para 17(4)

<sup>38</sup> Para 11(1) and (3)

- 3.42 Where a transaction is entered into by joint purchasers the higher rates will apply if the transaction would be a higher rates transaction for any of the purchasers considered individually<sup>39</sup>. 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.
- 3.43 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.
- 3.43A Where an individual (who is not a spouse or civil partner of another purchaser) is one of the purchasers of a dwelling but they will have absolutely no beneficial interest in the property, they will not be treated as a joint purchaser of that dwelling. This would have to be evidenced in writing. Any future entitlement to capital proceeds from the sale of the property, to income or to occupy the property would mean that they do have a beneficial interest.
- 3.44 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<sup>40</sup>.
- 3.45 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.
- 3.46 This treatment does not apply if the married couple 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<sup>41</sup>.
- 3.47 A partner in a partnership will be treated as a joint purchaser of land purchased by or on behalf of the partnership<sup>42</sup>. In this case the tests will need to be applied in respect of all the partners and if any one partner would be liable to the higher rates then the whole purchase will be so liable.

### **Individuals – Special Rules for applying Condition C – Interests held by a partner**

- 3.48 Some major interests in dwellings held by a partner in a partnership can be ignored if they are owned at the end of the day<sup>43</sup>.
- 3.49 This can apply where an individual purchaser is a partner in a partnership and is purchasing a major interest in a dwelling which is not being purchased for partnership purposes<sup>44</sup>. This is most likely the case where an individual is buying a main residence for themselves.

---

<sup>39</sup> Para 2(3)

<sup>40</sup> Para 9

<sup>41</sup> Para 9(3) and section 1011 Income Tax Act 2007

<sup>42</sup> Para 2 Sch 15 FA 2003

<sup>43</sup> Para 14

<sup>44</sup> Para 14(1)

- 3.50 The partnership must be carrying on a trade and the dwelling in which the purchaser already has an interest must be used for the purposes of the partnership's trade<sup>45</sup>.
- 3.51 A property letting business or any business exploiting land for rent carried on by a partnership is not a trade.
- 3.52 An interest in a dwelling held for the purposes of a partnership cannot be ignored when a dwelling is being purchased for the purposes of the partnership.

**Individuals – Special Rules for applying Condition C – Interests inherited in the last three years**

- 3.53 Following the death of an individual, the beneficiaries of their estate may become entitled to a major interest in a dwelling. The ways in which this might happen could be:
- where the deceased leaves the interest as a specific gift,
  - where the personal representative transfers the interest in satisfaction of a pecuniary gift or an interest in residue, or
  - under the law in another country, the deceased's interest passes automatically to the beneficiary as an heir to the estate.
- 3.54 Where a person becomes entitled to such an interest in the three years before a chargeable transaction, the interest can be ignored<sup>46</sup> provided that:
- the beneficiary became a joint owner of the interest by inheritance<sup>47</sup>,
  - 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<sup>48</sup>.
- 3.55 Where an interest is held as a tenant in common, the declared interest held by the owner and their spouse or civil partner must be 50 per cent of the whole interest or less.
- 3.56 Where an interest is held as joint tenants (undivided shares) the owner and any spouse or civil partner who is a joint tenant must make up either strictly half, or a minority of the joint tenants.
- 3.57 If such an interest was inherited more than three years before the chargeable transaction then it will count as an interest in another dwelling at the end of the day of the effective date of the chargeable transaction.

---

<sup>45</sup> Para 14(2)

<sup>46</sup> Para 16(2)

<sup>47</sup> Para 16(1)

<sup>48</sup> Para 16(4)



- 3.58 The date of the inheritance for these purposes is the date that the individual becomes entitled to the interest. An interest in an unadministered estate is not a major interest in land and so usually the date the individual acquired the interest is the date the interest is transferred to them. Although, see Capital Gains Manual at CG30700 onwards for the situation where the residue of an estate has been ascertained and the personal representative holds the residue of the estate for the beneficiary absolutely.
- 3.59 In jurisdictions where property devolves directly on heirs, the date of inheritance will be the date of death.

## Chapter 4: Purchases of two or more dwellings by individuals

---

### Individuals – purchases of two or more dwellings

- 4.1 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.
- 4.1A The guidance above at 2.10B to 2.10D explains that special treatment may apply where more than one dwelling is purchased in a single transaction but one of the dwellings is worth at least two thirds of the total transaction value.
- 4.2 The same Conditions are used for each purchased dwelling or the purchaser as for an individual purchasing one dwelling, although Condition A is modified. Not all of these tests must be met for a purchase of two or more dwellings to be liable to the higher rates.
- *Condition A* - the chargeable consideration attributable to a dwelling on a just and reasonable basis is £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;
  - *Condition C* - 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; and
  - *Condition D* - the dwelling being purchased is not replacing the purchaser's only or main residence<sup>49</sup>.
- 4.3 There are two independent tests for when the higher rates apply to a purchases of more than one dwelling by an individual.
- 4.4 If there are joint purchasers, then if one of the two tests is met by any one of them then the higher rates will apply.
- 4.5 In any case where none of the interests in dwellings purchased meet both Conditions A and B (for example the purchase of a freehold over a block of flats where all the flats are subject to long leases) the higher rates will not be applicable.

### Two or more purchased dwellings meet Condition A and Condition B

---

<sup>49</sup> Conditions C and D are not referred to as such in para 6(1), but para 6(1)(e) is the same test as Condition C in para 3(4) in respect of the purchaser and para 6(1)(d) is the same test as Condition D in para 3(5) in respect of the dwelling. The conditions are referred to here as Conditions C and D to aid the reader who has familiarised themselves with the test for a purchase of a single dwelling.

- 4.6 The higher rates of tax will apply if two or more of the dwellings purchased meet Conditions A, B and C<sup>50</sup>. Condition B is the same as that for a purchase of a single dwelling.
- 4.7 Condition A requires that the amount of chargeable consideration *attributable* to a dwelling covered by the transaction is at least £40,000 when calculated *on a just and reasonable basis*<sup>51</sup>.
- 4.8 If two or more dwellings are purchased in the same transaction and at least two of them are worth £40,000 or more and are not reversionary on a lease with more than 21 years to expiry then the transaction will be a higher rates transaction. This is irrespective of whether the individual owns an interest in another dwelling at the end of the day or whether one of the purchased dwellings replaces a main residence.

#### **Only one dwelling meets Conditions A and B**

- 4.9 The second test for the higher rates where more than one dwelling is purchased in a single transaction is applicable where only one of the dwellings meets both Conditions A and B<sup>52</sup>. If this is the case then the transaction is a higher rates transaction only if the dwelling that meets Conditions A and B also meets Condition D above and Condition C is met in respect of the purchaser. Condition C is that the individual owns another major interest worth £40,000 or more, and which is not reversionary on a long lease at the end of the day of the transaction<sup>53</sup>. Condition D is that the purchase of the dwelling (which meets Conditions A and B) is not a replacement of a main residence<sup>54</sup>.
- 4.10 This test treats the purchase of a substantive interest in a dwelling (that meets Conditions A and B) which is accompanied by under £40,000 or reversionary interests in other dwellings in the same way as if that dwelling were purchased on its own and subject to the tests for a purchase of a single dwelling.
- 4.11 The meaning of replacement of a main residence is the same here as above.
- 4.12 Condition C applies with the same interests treated as owned by the individual as in 3.37 to 3.41 above.

---

<sup>50</sup> Para 5(1)(c)

<sup>51</sup> Para 5(2)

<sup>52</sup> Para 6(1)(c)

<sup>53</sup> Para 6(1)(e)

<sup>54</sup> Para 6(1)(d)

## Chapter 5: Companies and trusts (including interaction with multiple dwellings relief)

---

### Companies and other non-individuals

5.1 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<sup>55</sup>:

- *Condition A* - the dwelling is purchased for chargeable consideration of £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;

5.2 If none of the interests in dwellings meet both Conditions A and B then the higher rates will not apply to the purchase.

### Trustees purchasing properties

5.3 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.

5.4 A trustee is a trustee of a bare trust if the beneficiary or beneficiaries are absolutely entitled to the property against the trustees. It also includes cases where the beneficiary would be absolutely entitled but for disability or age preventing the beneficiary from holding the legal title<sup>56</sup>.

5.5 A trustee is a trustee of a trust for life or income if some beneficiary is entitled to either:

- to occupy the dwelling for life, or
- to the income earned in respect of the dwelling<sup>57</sup>.

5.6 It does not matter if one or more than one beneficiary has the entitlement to occupy or entitlement to income.

5.7 A bare trustee purchaser is ignored for the purposes of determining whether a purchase is subject to the higher rates, the absolute beneficiary or beneficiaries are treated as the purchaser or purchasers<sup>58</sup>.

5.8 On a purchase by a trustee of a trust for life or income interests, whether the higher rates apply is determined as if any beneficiaries with the interests above were the purchaser or purchasers and the trustee was not the purchaser<sup>59</sup>.

---

<sup>55</sup> Paras 4 and 7

<sup>56</sup> Para 3 Sch 16 FA 2003

<sup>57</sup> Para 10(1)(c)

<sup>58</sup> Para 3(1) Sch 16 FA 2003 and para 10(2) and (3) Sch 4ZA

<sup>59</sup> Para 10(3)

5.9 So, if the beneficiary for life is an individual and the purchase is of a single dwelling, the trustee must consider whether the individual, and not the trustee, meets Condition C and D above. If the beneficiary owns another interest in a dwelling at the end of the day worth £40,000 or more, and not subject to a 21 year lease then it will be a higher rates transaction unless the trustee's purchase is a replacement of the beneficiary's main residence.

5.10 Where a person purchases a dwelling as a trustee and the trust is neither a bare trust nor a trust for life or income the trustee is liable to the higher rates in the same situation as a company purchaser<sup>60</sup>. That is, where a purchased dwelling meets Condition A (consideration paid is £40,000 or more) and Condition B (not subject to a 21 year lease), the higher rates will apply.

5.11 This treatment will apply to a trust that gives the trustee a discretion to apply income between a class of beneficiaries or a trust which accumulates income.

#### *Example 6*

J and K are individuals acting as trustees for the Z trust. Using trust funds, they purchase a dwelling. The Z trust entitles an individual beneficiary, L, to occupy the dwelling for life or entitles L to the income from the property. J and K must consider whether the higher rates would apply if L were purchasing the dwelling rather than them. So if L has another interest in a dwelling (Condition C) on the effective date and the purchase is not a replacement of L's main residence (Condition D) then the higher rates will apply, otherwise they will not.

#### *Example 7*

M and N are individuals acting as trustees for the X trust. Using trust funds, they purchase a dwelling. The X trust enables M and N to apply the income from the dwelling at their discretion amongst a class of beneficiaries. M and N in this case are liable to the higher rates if they meet the tests normally applied to companies. That is, if the chargeable consideration is £40,000 or more (Condition A) and is not reversionary on a longer than 21-year lease (Condition B) the higher rates will apply.

### **Interaction with multiple dwellings relief**

5.12 Where two or more dwellings are purchased in a single or linked transaction multiple dwellings relief (FA2003/Schedule 6B) can be claimed. Where six or more dwellings are purchased in a single transaction the purchaser can choose whether to apply the non-residential rates of SDLT or claim multiple dwellings relief and pay the higher rates<sup>61</sup>.

#### *Example 8*

- A company purchases a block of 10 flats for £1,000,000.

---

<sup>60</sup> Para 13

<sup>61</sup> Section 116(7) FA 2003

- Applying multiple dwellings relief the SDLT due would be £30,000. (Average price of £100,000 x 3% x 10).
- Applying the non-residential rates the SDLT due would be £39,500. (£150,000 x 0% plus £100,000 x 2% plus £750,000 x 5%)
- The purchaser can choose to apply the non-residential rates or make a claim for multiple dwellings relief.

*Example 9*

- A company purchases a block of 10 flats for £3,000,000.
- Applying multiple dwellings relief the SDLT due would be £140,000, calculated as follows:

<b>Average purchase £300,000</b>	<b>SDLT due</b>
3% on the first £125,000 =	£3,750
5% on the next £125,000 =	£6,250
8% on the final £50,000 =	£4,000
SDLT due per flat	£14,000
<b>Total SDLT due</b>	<b>£140,000</b>

- Applying the non-residential rates the SDLT due would be £139,500. (£150,000 x 0% plus £100,000 x 2% plus £2,750,000 x 5%).
- The purchaser can choose whether to apply the non-residential rates or make a claim for multiple dwellings relief.

## Chapter 6: Filing and amendments

---

### Filing a return and making a payment

- 6.1 A return must be filed and payment made within 30 days of the effective date of the transaction, as with other types of SDLT purchases<sup>62</sup>.
- 6.2 To file a return for the higher rates the main purchaser or agent acting on their behalf will need to complete a SDLT1 return, the same return as required for other types of SDLT purchases. If the transaction is subject to the higher rates then question 1 on the form, on 'type of property', needs to be completed as code 04. If the transaction is not subject to the higher rates, for example, if your only other interest in a residential property is a small share in a recently inherited property the form needs to be completed as code 01.
- 6.3 Payments can be made in exactly the same way as payments for other SDLT purchases and guidance on ways to make a payment can be found on GOV.UK.

### Claiming a repayment

- 6.4 If a previous main residence is sold within 3 years of paying the higher rates on a new main residence a refund is available. A refund can be claimed by making an amendment to the original return. Repayments need to be claimed within 3 months of the sale of the previous main residence, or within 1 year of the filing date of the return, whichever comes later.
- 6.5 The refund is for the amount of SDLT paid above what would have been charged had the property not been an additional residential property. This can be calculated using the online SDLT calculator which is available on GOV.UK.
- 6.6 A repayment can also be claimed by completing a SDLT repayment request form. The form can be found at <https://www.gov.uk/government/publications/stamp-duty-landtax-apply-for-a-repayment-of-the-higher-rates-for-additional-properties>.
- 6.7 The form will need to be completed online and the summary printed and posted to HMRC Birmingham Stamp Office. In due course a form will also be available which can be submitted online. This will require the individual completing the form to verify their identity.
- 6.8 The form can be completed by either the main purchaser who paid the higher rates of SDLT, or an agent acting on their behalf. Certain pieces of information will be needed to complete the form: the SDLT UTRN from the property which the higher rates were paid on and the name of the purchaser of the property which has been sold. If the form is completed by an agent, and the payment is to be made to the agent, then a signed letter of consent from the main purchaser will need to be attached to the form.

---

<sup>62</sup> Section 76(1) FA 2003

6.9 HMRC aims to process all repayments within 15 working days of receiving all the information requested in the form. HMRC will issue the payment by payable order, or will issue a letter explaining why the request has not been successful.



## Chapter 7: Transitional Rules

---

7.1 Where applicable, the higher rates will apply to all purchases that complete on or after 1 April 2016.

7.2 Transitional rules provide that the higher rates will not apply where a contract has been:

- entered into and substantially performed before 26 November 2015, or
- entered into before 26 November 2015 and not amended after that date.

7.3 The transitional rules will not apply where contracts were entered into before 26 November 2015 if:

- there is any variation of the contract or assignment of rights under the contract on or after 26 November 2015;
- the transaction is effected in consequence of the exercise on or after 26 November 2015 of any option, right of pre-emption or similar right;
- on or after 26 November 2015 there is an assignment, sub-sale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance to him by virtue of FA16/s128(7).

7.4 A variation of a contract would include a change to:

- the land being purchased,
- the parties to the contract, or to the contractual consideration, or
- in an agreement for a lease to the term length.

7.5 However, some changes, for example, to prescribed colour schemes or to the contractual completion date, may be too insignificant to amount to a variation.

### **Reservation fees for off-plan purchases**

7.6 The payment of a reservation fee or an option to purchase a property, for example, on a new development that has not yet been built or completed, would not generally amount to the exchange of formal contracts between the buyer and seller and therefore the transitional rules will not apply if such a fee were paid on or before 25 November 2015, but contracts had not been exchanged.

#### *Example 10*

Mr A exchanged contracts with a developer on 27 October 2015 on the purchase of 4 flats which he intends to rent out. He also owns a property jointly with his wife which is the family home. On 16 January 2016 Mr A varied the contract to add his wife as a joint purchaser of the properties. Mr A will not be able to benefit from the transitional provisions as the contract was varied after 25 November 2015.

## Chapter 8: Questions and Answers

### Notes

- *Unless otherwise stated all the examples below assume that the consideration given for a property is £40,000 or more and that the market value of any interest held in another property is £40,000 or more.*
  - *It is assumed that the SDLT Higher Rate of 15% does not apply to any of the transactions mentioned in this Chapter.*
  - *A share in a property is accepted as a major interest.*
  - *The replacement of a main residence is the disposal of a current or previous main residence and the purchase of a new one.*
- 

- Q1. I am purchasing a new main residence but intend to retain my current main residence, convert it to a buy-to-let mortgage and rent it out. Will I have to pay the higher rates of SDLT on the purchase of my new main residence?
- A1. Yes, the higher rates will apply as following the purchase you will own an additional residential property and will not have replaced your main residence. However, if you sell your previous main residence within 3 years of the purchase of the new one you will be able to claim a refund from HMRC.
- Q2. I currently live in rented accommodation but own a property that is rented out. I am now looking to purchase my first home, for me and my family to live in. Will I have to pay the higher rates of SDLT on this purchase?
- A2. Yes, the higher rates of SDLT will apply as following the purchase you will own an additional residential property and will not have replaced your main residence.
- Q3. I have been living and working overseas for a number of years and purchased a property there which I used as my main residence. I am now returning to the UK and wish to purchase a property here which will become my main residence. I intend to keep my overseas property to use as a holiday home. As I am purchasing a new main residence will I be exempt from the higher rates of SDLT?
- A3. No, the higher rates will apply to the UK purchase as following the purchase you will own an additional residential property and will not have replaced your main residence.
- Q4. I, an individual, am a property developer who purchases residential properties, refurbishes and then sells them. Will I be exempt from the higher rates of SDLT on any purchases that I make after 1 April 2016?
- A4. No, there are no reliefs or exemptions from the higher rates for property developers. The higher rates will apply to any purchase that completes on or after 1 April 2016.

- Q5. Will my property rental company be exempt from the higher rates on purchases of properties for rental?
- A5. No, the higher rates will apply to all purchases of residential property by companies. There are no reliefs or exemptions from the higher rates for property companies.
- Q6. I am the tax advisor for a charity. The charity can generally claim relief from SDLT on the purchase of property used for charitable purposes. Will the charity have to pay the higher rates on future purchases of residential property?
- A6. No, provided the purchase of the new property meets the conditions for relief, the charity will be able to claim full relief from any SDLT that would otherwise be due.
- Q7. I jointly own a buy-to-let property with 4 friends. The property is worth £150,000, with my share being worth £30,000. I currently live with my parents but am now looking to purchase a home to live in. Will I have to pay the higher rates of SDLT on this purchase?
- A7. No, as your share of the buy-to-let property is under £40,000, the higher rates will not apply.
- Q8. I own a main residence and also jointly own a buy-to-let with my brother. I'm planning to purchase my brother's share, paying him some cash and taking on his share of the mortgage. Will the higher rates apply?
- A8. Yes, so long as you contribute £40,000 or more, the higher rates will apply to the total amount you give for your brother's share, including any mortgage debt that you take on, as you already own another residential property and are not replacing your main residence.
- Q9. I live in accommodation provided by my employer. I am purchasing my own home which will be the only residential property I own. Will the higher rates of SDLT apply?
- A9. If you live in accommodation that you do not own, it will not count in determining whether you are purchasing an additional residential property. If you do not own any other property then the higher rates of SDLT will not apply.
- Q10. I live in accommodation provided by my employer. I am now purchasing a home for my family and me to live in. I also own a buy-to-let property. Would I be subject to the higher rates of SDLT?
- A10. Accommodation that you do not own will not count in determining whether you are purchasing an additional residential property. In this case, the higher rates will apply to the purchase of your new home unless a home that you lived in before you entered employer provided accommodation qualifies for main residence replacement relief.

- Q11. I exchanged contracts on a buy-to-let property before the Chancellor's announcement on 25 November 2015, but won't complete on the purchase until June 2016. I already own a main residence where I live with my family. Will I have to pay the higher rates on the purchase of the buy-to-let property?
- A11. The higher rates will not apply to contracts entered into before 26 November 2015 that complete on or after 1 April 2016. However, these transitional rules may not apply to certain transactions, for example, where there is a variation of the contract or an assignment of the rights under the contract on or after 26 November 2015. In such circumstances the higher rates will apply.
- Q12. I am currently living in rented accommodation, having sold my previous main residence nearly 18 months ago. I am now looking to purchase a new main residence within the next few months. I also have a number of buy-to-let properties. Will I have to pay the higher rates on the purchase of my new main residence?
- A12. If you purchase your new main residence on or before 26 November 2018 the higher rates will not apply as you will be treated as replacing your main residence. If you purchase your new main residence after 26 November 2018 you will be treated as replacing your main residence provided you purchase your new main residence within 3 years of the sale of your previous one.
- Q13. I own a holiday home in Cornwall and a house in London which is my main residence. I am in the process of selling my main residence and purchasing a new one. I may not be able to sell my current main residence before I complete on the purchase of the new one – will I have to pay the higher rates?
- A13. Yes, the higher rates will apply, as following the purchase of your new property you will own an additional residential property and will not have replaced your main residence. However, if you sell your current main residence within 3 years of the purchase of the new one you will be able to claim a refund from HMRC.
- Q14. I am purchasing a new main residence and selling my previous main residence but my chain falls though. I go ahead with the purchase of my new property so now own two properties. Will I have to pay the higher rates on my new purchase?
- A14. Yes, you will pay the higher rates. However, if you sell you previous main residence within 3 years of the purchase of your new one you will be able to claim a refund from HMRC.
- Q15. I am purchasing a shop with a flat above as an investment. Both the shop and flat will be rented out. I also own a main residence and a flat which is rented out. Will I have to pay the higher rates?
- A15. No the higher rates do not apply to purchases which contain both residential and non-residential elements.

- Q16. I have a 25% share in a statutory shared ownership property [with a social landlord] and wish to increase my share to 80%. I own no other residential property. Will I have to pay the higher rates?
- A16. No, as this is the only residential property that you own the higher rates will not apply.
- Q17. I own a house which my husband and I live in as our main residence. My husband is planning to buy a flat to rent out – this will be in his name only. As we will then only own one property each I assume the higher rates will not apply to the purchase of the flat?
- A17. The higher rates will apply to the purchase of the flat. As a married couple you will be treated as joint purchasers of new property and therefore any other property owned by either of you will be taken into account when determining whether the higher rates apply. The purchase of the flat will therefore be classed as an additional residential property.
- Q18. I have recently separated from my spouse and am about to purchase a new property that will become my main residence. I still own a share in the former marital home. Will I be liable for the higher rates of SDLT?
- A18. If you purchase a new main residence while still owning a share in your former home the higher rates will apply. However, if you dispose of a major interest in your previous main residence within 3 years of purchasing your new one, a refund of the higher rates can be claimed.
- Q19. My partner and I jointly own our home. We are purchasing another residential property which we intend to rent out/use as a holiday home. Will we have to pay the higher rates of SDLT?
- A19. Yes, you will be liable to the higher rates if purchasing an additional residential property and not disposing of your previous main residence.
- Q20. My partner and I are in the process of purchasing a property jointly, this will be our main residence. I currently own another property which I rent out but my partner is a first time buyer. Will we have to pay the higher rates of SDLT on the whole purchase price or just on the 50% that I am purchasing.
- A20. The higher rates will apply to the total purchase price as following the purchase you will own an interest in an additional residential property. For joint purchases the higher rates will apply if either of the purchasers own other residential property and there is no main residence replacement.
- Q21. I am helping my son purchase a property that will be his main residence. My son is a first time buyer but I own another property which is the family's main residence. I will have a 30% share in the property and my son a 70% share. Will we have to pay the higher rates of SDLT?

- A21. Yes, the higher rates will apply as following the purchase you will own an interest in an additional residential property and will not have replaced your main residence.
- Q22. I am purchasing 6 residential properties in the same transaction. Am I liable to the higher rates of SDLT and can I claim multiple dwellings relief?
- A22. As you are purchasing at least 6 dwellings, you can choose whether to pay SDLT at the non-residential rates or claim multiple dwellings relief. If you choose to claim multiple dwellings relief the higher rates will apply, the minimum rate payable being 3% where the average price of the properties is £125,000 or below. If you choose to pay SDLT at the non-residential rates please enter code 03 as the type of property on your SDLT return. If multiple dwellings relief is claimed, use code 4.
- Q23. I am purchasing two flats in the same block in a single transaction. I intend to live in one of the flats and rent one out. I own no other residential property. Will I be exempt from the higher rates of SDLT on the flat that I intend to live in?
- A23. No, the higher rates will apply to the purchase of both flats, although you will be able to claim multiple dwellings relief on the purchases. Under multiple dwellings relief the SDLT due is based on the average value of each flat, rather than the total amount paid for both. The minimum rate payable under multiple dwellings relief is 3% where the average price of the properties is £125,000 or below.
- Q24. Will a company be subject to the higher rates of SDLT?
- A24. A company purchasing a residential property will be subject to the higher rates of SDLT, even if the property will be its only residential property. There are no special exemptions from the higher rates of SDLT for companies. However, the higher rates of SDLT will not apply in circumstances where the company is subject to the 15% rate of SDLT.
- Q25. I can claim relief from the 15% rate of SDLT on purchases of residential property for use in my property rental business. Will I also be able to claim relief from the higher rates for purchases of additional residential properties?
- A25. No, the reliefs that apply for the purposes of the 15% rate of SDLT do not apply for the higher rates for purchases of additional residential properties. If relief from the 15% rate of SDLT is available, the higher rates will apply.
- Q26. I have shares in a limited company which owns a property for rental to tenants. I am purchasing another property which I will own direct. I do not own any other residential property. Will I have to pay the higher rates?

- A26. No, shareholdings in a company that owns residential property will not be counted when determining if an individual is purchasing an additional residential property, although the company may be liable to the higher rates if it purchases residential property. As this is your first purchase of a residential property the higher rates will not apply.
- Q27. We are trustees of a bare trust in which all the assets and income are held for specified beneficiaries. We are purchasing a residential property. Will we have to pay the higher rates of SDLT?
- A27. The answer will depend on the situation of the beneficiaries. If any of the beneficiaries are individuals who own other properties then you will be liable to the higher rates unless the purchase is a replacement of the beneficiaries' main residence.
- Q28. We are trustees of an interest in possession trust (IIP). As trustees, we are purchasing a residential property. Will we have to pay the higher rates of SDLT?
- A28. The answer will depend on the situation of the beneficiary with the interest in possession. If the IIP beneficiary is an individual who owns other properties then the transaction will be liable to the higher rates unless the purchase is a replacement of the beneficiary's main residence.
- Q29. We are trustees of a discretionary trust. As trustees, we are purchasing a residential property. Will we have to pay the higher rates of SDLT?
- A29. A trustee of a discretionary trust purchasing a residential property will be subject to the higher rates of SDLT, even if the property will be its only residential property. There are no special exemptions from the higher rates of SDLT for discretionary trusts.
- Q30. I am in the process of purchasing my first property and I have unexpectedly inherited a 20% share in a property from an uncle. I own no other property. Will I have to pay the higher rates on my purchase?
- A30. No, the higher rates will not apply. A small share (50% or less) in a property which has been inherited within the 3 years of the purchase will not be taken into account in determining whether a purchaser is purchasing an additional residential property.
- Q31. How do I pay the higher rates? Is there a new form to fill in?
- A31. The process for making a SDLT return and paying the tax is the same as it would have been before this policy came into effect, and the same as for other SDLT charges. The only difference is that you will need to choose a new code on the SDLT return – you should enter code 04, instead of code 01, as the property type. As previously, the return will then calculate the tax due. The guidance for completing the SDLT form has been updated and includes information on the new code.

- Q32. How do I claim a refund? Can I claim his myself?
- A32. If you sell your previous main residence within 3 years of purchasing your new main residence, you can claim a refund of the higher rates of SDLT. There is a simple form to complete which is available on GOV.UK at: <https://www.gov.uk/government/publications/stamp-duty-land-tax-apply-for-arepayment-of-the-higher-rates-for-additional-properties>. This will need to be completed within 3 months of selling your previous main residence, or within 12 months of the filing date of the return, whichever comes later. This can be completed by the main purchaser of the property which the higher SDLT payment was paid on; or by a solicitor acting on your behalf, if you provide a letter of consent.
- Q33. How long will take for the refund to be paid?
- A33. HMRC aims to process all repayment requests within 15 working days. This assumes that you provide HMRC with all the information we need upfront. The repayment request form, which is available on GOV.UK, sets out all the information that HMRC will need to process a repayment. Link to form: <https://www.gov.uk/government/publications/stamp-duty-land-tax-apply-for-arepayment-of-the-higher-rates-for-additional-properties>.
- Q34. Will I be paid compensation if the refund takes longer than 15 working days?
- A34. HMRC does not pay compensation if a refund takes longer than 15 days. However, you will be entitled to interest on the amount paid, which will be included automatically in the repayment.



## Chapter 9: Further Examples

### Notes

- *Unless otherwise stated all the examples below assume that the consideration given for property is £40,000 or more and that the market value of any interest held in another property is £40,000 or more.*
- *It is assumed that the SDLT Higher Rate of 15% does not apply to any of the transactions mentioned in this Chapter.*
- *A share in a property is accepted as a major interest.*
- *The replacement of a main residence is the disposal of a current or previous main residence and the purchase of a new one.*

### Example 1

---

Mr and Mrs S, a married couple, each own a residential property, with neither having any interest in the other's property. They both live in the property owned by Mrs S: the property owned by Mr S is rented out. Mrs S is selling her property and they are jointly purchasing a new one, which will be their new main residence. Mr S will retain his rented out property.

The higher rates will not apply to the joint purchase by Mr and Mrs S of a new main residence. As they are married and have both lived in the property owned by Mrs S as their main residence they will both be treated as replacing their main residence.

### Example 2

Mr P and Ms B, who are not married to one another, each own a residential property, with neither having any interest in the other's property. They both live in the property owned by Ms B: the property owned by Mr P is rented out. Ms B is selling her property and they are jointly purchasing a new one, which will be their new main residence. Mr P will retain his rented out property.

The higher rates will apply to the joint purchase of a new main residence by Mr P and Ms B. As they are not married (or in a civil partnership) Mr P will not be treated as replacing his main residence as, even though he has been living in the property owned by Ms B, he has no interest in the property Ms B is selling.

### Example 3

Mr T owns both a main residence and a buy-to-let property. He is in the process of purchasing a new main residence. He intends to keep his current main residence and rent it and sell his buy-to-let property, although the sale may not take place until after the purchase of his new property.

The higher rates will apply to the purchase of the new property as following the purchase Mr T will own an additional residential property and is not replacing his main residence. Mr T will not be able to claim a refund when he sells his current buy-to-let property as refunds are only available where a previous main residence has been replaced.

### Example 4

Ms G currently owns two buy-to-let properties, which she has owned for a number of years. She sold her previous main residence six months ago and moved temporarily into one of her buy-to-let properties, whilst looking for a new main residence.

Ms G will be treated as replacing her main residence if the property she sold six months ago was her only or main residence and completion occurred on or before 26 November 2018. The fact that she lived in one of her buy-to-let properties in the interim period does not affect this.

#### **Example 5**

Mr & Mrs C currently own a mixed use property, a shop with a flat above, both of which are rented out. They currently live in rented accommodation but are in the process of purchasing a new property which will be their main residence.

The higher rates will apply to the purchase by Mr and Mrs C as they already own an interest in another residential property: the flat above the shop.

#### **Example 6**

Ms D currently owns two residential properties – her main residence and a 25% share in a second property that she owns jointly with 3 friends, each having a 25% share in the property. Ms D now wishes to purchase one of her friend's 25% share in the jointly owned property.

The higher rates will apply, as Ms D will be purchasing a major interest in a property, is not replacing her main residence and owns an interest in another property.

#### **Example 7**

Miss L owns two residential properties – a buy-to-let and a 50% share in a property that she owns jointly with her sister. The jointly owned property is her main residence. She is considering purchasing the remaining 50% of her main residence from her sister.

The higher rates will apply as Miss L is purchasing a major interest in a residential property, is not replacing her main residence and owns an interest in another residential property.

#### **Example 8**

Ms W has just been gifted a half share in a property. Her share is worth £120,000. She also owns a house, which is her family home.

The higher rates will not apply if no consideration of any kind is given for the property. However, if Ms W took over responsibility for half of the outstanding mortgage on the property this would count as consideration and the higher rates would apply. Further guidance on this is available on GOV.UK at <https://www.gov.uk/guidance/sdltransfering-ownership-of-land-or-property#if-you-transfer-property-because-of-divorce-separation-or-the-end-of-a-civil-partnership>.

#### **Example 9**

Mr F was gifted a half-share in a flat some years ago. The flat has always been rented out and his share is now worth £100,000. Mr F owns no other property but is in the process of purchasing a flat which will be his main residence.

The higher rates will apply to the purchase of the new property as Mr F already owns an interest in another residential property and is not replacing his main residence.

#### **Example 10**

Mr I is transferring 50% of a buy-to-let property that he owns to his wife, Mrs I. Mrs I is paying some cash and taking over responsibility for half the mortgage debt. Mrs I owns no other residential property but Mr I owns a number of other buy-to-let properties.

The higher rates will apply to the transfer as Mr I owns other residential properties. As a married couple other residential property owned by either spouse is taken in account in determining whether the higher rates apply.

#### **Example 11**

Mr and Mrs X jointly own two properties; they live in one as their main residence and rent the other out. Mr X is transferring his share in their main residence to his wife, who will take over sole responsibility for the mortgage.

The higher rates will apply as Mrs X owns an interest in another residential property and is not replacing her main residence. The higher rates will apply to the value of the mortgage taken over by Mrs X.

#### **Example 12**

Ms Q is purchasing the house next door to her current home, which she intends to merge with her current home.

The higher rates will apply as following the purchase Ms Q will own an additional residential property and is not replacing her main residence. A refund of the higher rates cannot be claimed once the work to merge the two properties is complete as refunds are only available where a previous main residence has been replaced.

#### **Example 13**

Mr E owns two properties, both flats: he lives in one and rents out the other. He is currently in the process of extending the lease on his main residence.

The higher rates will apply as Mr E is purchasing a major interest in a residential property, owns an interest in another residential property and is not replacing his main residence.

#### **Example 14**

Mr K currently owns one buy-to-let property and is in the process of purchasing another one. He lives in rented accommodation. He may consider selling one of the properties within the next couple of years.

The higher rates will apply to the purchase of the second buy-to-let property as following the purchase Mr B will own an additional residential property and is not replacing his main residence. A refund will not be available if Mr K subsequently sells one of his buy-to-let properties as a refund is only available where a main residence has been replaced.

#### **Example 15**

Ms R owns a buy-to-let property and a 25% interest in a property under a statutory shared ownership arrangement and which is her main residence. She is in the process of increasing her share in the shared ownership property to 80%. She paid no SDLT when she purchased her initial share as the amount she paid for this was under the threshold.

As Ms R owns another residential property the higher rates will apply to the purchase of the additional share in the property subject to the statutory shared ownership arrangement unless the replacement of only or main residence exception applies.

### **Example 16**

Mr N is in the armed forces and is currently stationed overseas. He owns two residential properties in the UK which are rented out. Due to the nature of his job he has never been able to live in either of the properties, although his intention has always been to live in one of them when he left the armed forces. This property is treated as occupied as a residence for Capital Gains Tax purposes. Mr N is retiring soon and is planning to sell this property and purchase a new one which will be his main residence.

The higher rates will apply to the purchase by Mr N of the new property even if he sells one of his rented properties, as neither has been his main residence. The SDLT rules do not allow armed forces personnel to treat a dwelling that they have never lived in as their main residence.

### **Example 17**

Mr R owns a house building company which often takes properties from purchasers in part-exchange for a new property. Schedule 6A of the Finance Act 2003 provides relief for such acquisitions, provided certain conditions are met.

Although there are no specific reliefs from the higher rates for property companies, other SDLT reliefs will still be available including those in Schedule 6A of the Finance Act 2003, provided the conditions for the relief are met.

### **Example 18**

Two brothers (Mr A & Mr J) recently inherited their parents' house, each owning a 50% share. Mr A owns no other property at present but is in the process of purchasing a flat, which will be his main residence.

The higher rates will not apply to the purchase of the new property by Mr A provided that this is purchased within 3 years of inheriting the property, and during that 3 year period the interest held by Mr A in the inherited property, together with any interest held by his spouse or civil partner, does not exceed 50%.

### **Example 19**

Mr and Mrs M are helping their son buy his first property by providing the deposit for a flat which will be his main residence. Mr and Mrs M currently own just one property, the family home. Due to the bank's lending criteria they require Mrs and Mrs M to be a party to the mortgage and be on the deeds of the property. On the same day as the purchase a deed will be executed which will provide that Mr and Mrs M have no interest in the property and that their son has full beneficial interest in the property.

The higher rates will not apply because Condition C is not met

### **Example 20**

Mr and Mrs Z are in the process of purchasing their first property, to be used as their main residence. Attached to the main house is a small annexe. Although the annexe has all the amenities for independent living (e.g. lounge, bedroom, kitchen and bathroom) it does not have separate access from the main house and does not have separate gas, electricity or water supplies.

For the purposes of the SDLT higher rates, the house and annexe would be treated as a single dwelling. As Mr and Mrs Z own no other residential property the higher rates will not apply.

### **Example 21**

Mr Y owns 2 buy-to-let properties and a main residence. He is in the process of selling his current main residence and has had an offer accepted on a new main residence. There is a separate 2 bedroom cottage in the grounds of the new property, which is used by the current owner's parents. The cottage has all the amenities for independent living, has its own gas, electricity and water supplies. The total purchase price is £1,000,000, with the cottage and its garden being valued at £150,000.

As the cottage is in the grounds of the main house and worth less than a third of the total purchase price, for the purposes of the higher rates Mr Y may claim multiple dwellings relief and will be treated as purchasing only one property. As he is replacing his main residence the higher rates will not apply.

### **Example 22**

Ms V currently only owns one property, her main residence. She is in the process of purchasing a property which, in addition to the main house has three barns in the grounds that have been converted into holiday lets. Ms V intends to rent out both the main house and the barns. The total purchase price is £1,200,000, with the main house and its garden and grounds being valued at £650,000 and each of barns at £150,000.

As the barns are worth more than one third of the total purchase price Ms V will be treated as purchasing four properties. As she already owns another residential property and is not replacing her main residence the higher rates will apply, although multiple dwellings relief may be claimed.

### **Example 23**

Mr B exchanged contracts in October 2015 to purchase a flat which is due for completion in January 2017. Mr B owns a number of buy-to-let properties and intends to add this one to his portfolio. In May 2016 the contract was varied to add his sister Ms L as a joint purchaser of the property.

Transitional provisions provide that where a contract was entered into before 26 November 2015 but is not completed until on or after 1 April 2016, the higher rates do not apply provided the contract is not varied after that date. As the contract was varied in May 2016 the transitional provisions will not apply and, as Mr B owns other residential property, the higher rates will be due on completion of the purchase.

### **Example 24**

Miss M has just returned to the UK after working abroad for a number of years and is in the process of purchasing a new home, which she hopes to complete on by the end of December 2016. She sold her previous main residence in 2009, before moving abroad, but retained a buy-to-let property in the UK. Miss M lived in rented accommodation while abroad.

Provided Miss M purchases her new main residence on or before 26 November 2018, and has not acquired another main residence in the interim period, she will be treated as replacing her main residence and the higher rates will not apply.