

## Briefing document

### Stamp Duty Land Tax (SDLT)

#### Introduction

This note sets out a brief overview of SDLT as it applies to acquisitions of residential property in England and Northern Ireland. In this note, we have only set out the rates applicable to purchases of residential property: different rates apply to purchases of non-residential property. Specific rules apply to 'mixed' acquisitions, where both residential and non-residential property is purchased.

Different property acquisition taxes apply in Wales (Land Transaction Tax – LTT) and in Scotland (Land and Buildings Transaction Tax – LBTT). LTT and LBTT are similar, but not identical to, SDLT.

Where properties straddle the English-Welsh border, the total consideration paid is apportioned between the English and Welsh portions of the property, and SDLT rates applied to the English portion of the consideration, and LTT rates to the Welsh portion of the consideration. The same treatment applies for SDLT and LBTT in respect of properties that straddle the English-Scottish border.

This briefing note does not comment further on LBTT or LTT. Please contact your advisor if you are considering acquiring a property in Scotland or Wales.

#### SDLT residential property rates

##### Overview

SDLT rates vary depending on the nature of the purchaser (e.g. an individual, trustee or company), whether or not another residential property is already owned and, if not, whether the purchaser is a first-time buyer. The rates set out in this note apply to purchases of freehold properties and any premium paid on the grant or assignment of any lease (note the SDLT payable on lease rents is different). Separate advice should be obtained if you are purchasing an interest in a lease.

##### Rates applicable to individuals who are not first time buyers

The rates applicable to individuals who are not first-time buyers are set out in the table below:

Consideration paid	Standard SDLT rate	Additional property SDLT rates
Up to £125,000 *	0%	3%
£125,001 to £250,000	2%	5%
£250,001 to £925,000	5%	8%
£925,001 to £1,500,000	10%	13%
More than £1,500,000	12%	15%

The rates set out above apply to each 'slice' of the purchase price. For example, if the standard SDLT rates apply and a property is purchased for £200,000, £125,000 of the consideration is subject to 0% SDLT, and £75,000 of the purchase price is subject to 2% SDLT, giving total SDLT payable of £1,500 (£75,000 x 2%).

An additional 3% SDLT applies to the entire purchase price where the purchaser owns two or more residential properties at the end of the day on which a new residential property is purchased, unless main residence replacement relief applies or you are buying an additional interest, or long lease, in your main residence. Further detail on this point is below.

\* SDLT only applies if the chargeable consideration for purchase is £40,000 or more. If SDLT does apply, the rates set out above will also apply to the first £40,000 of consideration.

### **SDLT rates applicable to first-time buyers**

The following SDLT rates apply to first-time buyers:

<b>Consideration paid</b>	<b>SDLT rate</b>
Up to £300,000 *	0%
£300,001 to £500,000	<ul style="list-style-type: none"><li>• 0% on first £300,000 of consideration,</li><li>• 5% on consideration between £300,001 and purchase price up to £500,000.</li></ul>
Over £500,000	Standard SDLT rates apply

A first-time buyer is defined as an individual who has never owned an interest in a residential property (ignoring a short lease) either in the UK or anywhere else in the world, and who intends to occupy the property as his or her main residence. If a property is purchased jointly, all of the purchasers must be first-time buyers for the above rates to apply.

### **Surcharge to apply to non-UK residents**

The government previously announced that an additional 1% surcharge will be introduced to apply to non-UK residents who purchase residential property within England or Northern Ireland. The government are currently considering the responses they received to a consultation on this topic which closed on 6 May 2019. An implementation date for this proposed change has not yet been announced.

### **SDLT reliefs available when multiple properties are purchased**

There are two reliefs that may be relevant where more than one property is purchased as part of a single transaction:

- Multiple dwellings relief is available when two or more residential properties are purchased as part of a single transaction. Where applicable, the purchaser is able to apply SDLT rates based on the average cost per property purchased, rather than applying SDLT rates based on the total price of the properties purchased.
- Where six or more dwellings are purchased as part of a single transaction non-residential SDLT rates can apply, instead of (higher) residential SDLT rates. Non-residential SDLT rates may also be relevant when a 'mixed-use' property is acquired, which has both residential and non-residential elements.

### **Acquisitions by companies**

Companies and certain other entities (e.g. a partnership with a corporate member) that purchase a residential property for more than £500,000 pay 15% SDLT on the entire purchase price, unless relief from the 15% rate is available. Relief is available for various businesses, such as property developers and rental businesses where the property is let to individual(s) unconnected with the company. Relief must be claimed in a land transaction return and certain conditions must be met for at least three years following acquisition of the property.

The usual SDLT rates apply if the 15% rate does not. If the 15% SDLT rate does not apply, the additional 3% SDLT rate does, unless non-residential SDLT rates are available (see below).

### **The additional 3% SDLT rate**

#### **Application of the additional 3% SDLT rate**

As explained above, the additional 3% rate applies where the purchaser of a residential property owns two or more residential properties at the "end of the day of purchase", unless the additional dwelling purchased replaces a main residence or you are extending your interest in your existing main dwelling (see below).

The higher rates do not apply where all of the property interests already owned, or the property interest which is purchased, are worth less than £40,000 on the day of completion. In addition, where an individual owns another property jointly with others, the part interest they own does not count if it is worth less than £40,000 even if the entire property itself is worth £40,000 or more. When determining whether a purchaser has two or more residential properties, equivalent property interests outside England and Northern Ireland are taken into account provided they are worth £40,000 or more.

The additional 3% rate only applies if the purchase is of a major interest in a property. This means a freehold or a lease longer than 7 years on grant. In addition, an interest in residential property will not count if it is an interest which is subject to a lease which has more than 21 years to run. The purchase of a freehold or long leasehold reversion therefore should be subject to the normal residential rates.

The additional 3% SDLT rate does not apply to purchases of mixed-use property, unless an election to apply multiple dwellings relief is made.

### **Replacement of main residence**

As noted, the additional 3% SDLT rate does not apply if a purchaser is replacing his or her main residence. Relief is available where the previous main residence was sold within three years of the purchase of the new main residence. If the previous main residence has not been sold by the end of the day on which a new main residence is acquired, the higher SDLT rates must be paid. The additional 3% SDLT paid will be refunded if the previous main residence is sold within three years of the acquisition of a new main residence. For example:

- If an individual with an existing portfolio of buy-to-let properties sells their family home and on the same day purchases a replacement family home, the higher rates should not apply to the purchase;
- If an individual with an existing portfolio of buy-to-let properties purchases a replacement family home (before completing the sale of their existing home) and sells their existing family home within three years of buying the replacement, they would need to pay the additional 3% SDLT rate on the purchase but could claim a refund following disposal of the previous family home.

Where the previous main home is sold after 28 October 2018, the repayment claim must be submitted within 12 months of the later of the date the old home is sold or the due date for filing a SDLT return on purchase of a new home. Different time limits apply where the previous home was sold before 29 October 2018.

- However, if an individual owns (and retains) an existing buy-to-let property and purchases their first family home in England or Northern Ireland, the additional 3% SDLT rate will apply, since he or she would not be 'replacing' a main residence.

Where an individual purchases two or more residential properties in one transaction, the additional 3% rate may apply to the whole transaction. However, if one of the properties is a replacement of the purchaser's main residence, relief from the higher rates can be claimed provided the other property is an annex within the grounds of the main home and is worth no more than a third of the total transaction value.

### **Main residence**

Whether or not a property is a main residence is determined according to all the facts. There is no ability to elect for which property is a main residence (as there is for the capital gains tax private residence relief). HMRC previously released some guidance on the factors it will consider in order to determine which dwelling is an individual's main residence, which include where the individual and their family spend their time, what they provide as their postal address, where they work and the degree of furnishing of the dwelling.

### **Other reliefs from the additional 3% SDLT rate**

Where the buyer of a residential property is not an individual, such as a company or a trustee, including an individual acting as trustee, the additional 3% SDLT rate applies to any purchase of any residential property, unless the consideration is less than £40,000 or the purchased property is a reversionary interest.

There are two exceptions from the general rule that the higher SDLT rates apply to all purchases by trustees:

1. 'Bare trustees' (or nominees) who purchase a property on behalf of an individual where the individual is absolutely entitled to the beneficial ownership of the property, are treated as a purchase by the individual. The SDLT position will therefore follow that of the individual.
2. Similarly, if a beneficiary of a trust has a 'relevant interest' in a dwelling that is part of the trust property, then, when determining whether the additional 3% rate applies, the beneficiary is treated as if he or she is the buyer or owner of the dwelling. A beneficiary will have a relevant interest if they are entitled to (a) occupy the dwelling for life, or (b) income earned in respect of the dwelling.

Companies may be eligible for SDLT relief in some cases, such as where there is an intra-group transaction or where a property is purchased by a charitable company.

### **Joint purchasers, civil partners and married couples**

Joint purchasers, and spouses or civil partners who are living together are treated as if they are one unit. Therefore, if one party to a marriage or civil partnership holds an interest in a residential property, the other will be regarded as holding an interest in that residential property as well. Therefore, if one joint purchaser of a residence already holds an interest in a dwelling, the additional 3% SDLT rates will apply to the whole transaction, even though the other joint purchaser may not own any other property.

The additional 3% SDLT rate does not apply where spouses or civil partners who are living together acquire property from each other.

In addition, parents are deemed to own a property if it is owned on behalf of their minor child (being a person under the age of 18), or the minor child of their spouse or civil partner. A minor cannot own land or property in the UK and so such property has to be held in trust for the minor. Where that is the case the property is regarded as owned by the parent or their spouse/civil partner for the purposes of these rules. The parent will be taken to be the purchaser if a property is bought on behalf of their minor child.

Limited exceptions apply where a property is purchased on behalf of a child pursuant to an appointment made by the Court of Protection or under the Mental Capacity Act (Northern Ireland) 2016.

### **Partnerships**

An acquisition by a partnership is treated as an acquisition by all of the partners jointly.

If an acquisition is made by an individual, in their personal capacity, who is also a partner, any major interest in a dwelling held by the partnership will not be treated as an additional property for that individual if the partnership is carrying on a trade. Properties held by a partnership that carries on an investment business, such as a rental business, are attributable to all the partners when they or their spouses etc. buy properties in a personal capacity.

### **Non-residential and mixed use property SDLT rates**

The SDLT rates that apply on purchase of non-residential or mixed use property are set out below:

<b>Relevant consideration</b>	<b>SDLT rate</b>
Up to £150,000	0%
£150,001 to £250,000	2%
More than £250,000	5%

A 2% SDLT rate applies in respect of the grant of a lease of mixed use or non-residential property where the Net Present Value (NPV) of the VAT inclusive amount of the rent exceeds £5million. The 1% lease duty charge which applied previously continues to apply to the NPV of the rent between £150,001 - £5million (inclusive).

SDLT is calculated on a 'slice' basis, as for the residential property rates included at the outset of this note.

### **SDLT returns and tax payments**

SDLT returns must generally be filed and any tax due paid, currently within 14 days of the purchase of a property. Forms do not need to be filed if the acquisition price is below £40,000. SDLT returns are generally completed by legal advisors as part of the conveyancing process.

### **Find out more...**

This note reflects the law in force as at 2 August 2019. Please be aware that this note does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Jonathan Evans ([jonatevans@deloitte.co.uk](mailto:jonatevans@deloitte.co.uk)).

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