

Explanatory Note

SDLT: Higher rates for additional dwellings etc

Summary

1. This clause introduces new rates of Stamp Duty Land Tax for certain purchases of dwellings. The purchases subject to these new rates are those undertaken by individuals who already own other dwellings (and are not replacing a main residence) and purchases by any person who is not an individual.

Details of the clause

2. Subsection 2 inserts new subsection (4A) into section 55 Finance Act 2003. This provides that a new table of rates will apply to the relevant consideration of a residential transaction in accordance with schedule 4ZA.

Schedule 4ZA Finance Act 2003

3. Subsection 3 insert new schedule 4ZA after schedule 4 in Finance Act 2003.

Schedule 4ZA: Part 1: Higher rates

4. Sub-paragraph 1(1) provides that where a chargeable transaction is a higher rates transaction, the normal table of rates of tax applicable to residential transactions (Table A) is replaced by a new table in sub-paragraph 1(2).
5. Sub-paragraph 1(2) sets out the new Table A which set out the rates applicable to a higher rates transaction. The new Table A, like that which it replaces for higher rate transactions, applies on a "slice" basis, where progressive rates apply to different portions of the total consideration. The first £125,000 of consideration is always charged at 3%, the next £125,000 (if any) is always charged at 5% and so on.

Schedule 4ZA: Part 2: Meaning of "higher rates transaction"

6. Part 2 prescribes whether a chargeable transaction is a higher rates transaction.
7. Paragraph 2 defines a higher rate transaction.
8. Sub-paragraph 2(2) sets out the meaning of higher rate transaction where a chargeable transaction is undertaken by only one purchaser. The chargeable transaction is a higher rate transaction only if the transaction is within any of paragraphs 3 to 7 with regard to the purchaser.
9. Sub-paragraph 2(3) sets out the meaning of higher rate transaction where a chargeable transaction is undertaken by more than one purchaser. The chargeable transaction is a higher rate transaction if the transaction is within any of paragraphs 3 to 7 with regard to any of the

purchasers. This test also applies to married couples and civil partners who purchase properties as a sole purchaser because of the provision at paragraph 9.

10. Sub-paragraph 2(4) modifies the meaning of "major interest" in the schedule. "Major interest" is defined in section 117 Finance Act 2003 and means a freehold or leasehold interest. For the purposes of the Schedule a leasehold interest is treated as not being a major interest if the lease was originally granted for a period of 7 years or less.
11. Paragraphs 3 and 4 deal with chargeable transactions involving only a single dwelling.
12. Paragraph 3 sets out the test for when a chargeable transaction is a higher rate transaction for an individual purchasing a major interest in a single dwelling. A transaction is a higher rate transaction under paragraph 3 if it meets all of Conditions A to D in sub-paragraphs 3(2) to (5).
13. Sub-paragraph 3(2) sets out Condition A. Condition A is that the chargeable consideration for the chargeable transaction is equal to or more than £40,000.
14. Sub-paragraph 3(3) sets out Condition B. Condition B is met unless the interest purchased is a freehold or superior leasehold that is reversionary on a lease with more than 21 years left to run at the date of the transaction.
15. Sub-paragraph 3(4) sets out Condition C. Condition C is met if the purchaser has a major interest meeting certain criteria in one or more other dwellings at the end of the day of the effective date of the transaction. The major interests that are relevant for Condition C are those:
 - with a market value of more than £40,000, and,
 - that are not reversionary on a lease with more than 21 years left to run at the date of transaction.
16. Sub-paragraph 3(5) to 3(7) set out Condition D. Condition D is met if the chargeable transaction is not a replacement of the purchaser's only or main residence. Sub-paragraph 3(6) deals with the situation where a previous main residence has been disposed of before or on the same day as the chargeable transaction. Sub-paragraph 3(7) deals with the situation where a previous main residence has been sold after the chargeable transaction.
17. Sub-paragraph 3(6) provides that a chargeable transaction will be a replacement of the purchaser's only or main residence if:
 - the purchaser intends the purchased dwelling to be their only or main residence,
 - the purchaser, their spouse or their civil partner have disposed of a major interest in a previous main residence in the three years before the purchase, and
 - the purchaser, their spouse or civil partner have not acquired another major interest in a main residence since the disposal.

18. Sub-paragraph 3(7) provides that a chargeable transaction becomes a replacement of the purchaser's only or main residence if:
 - the purchaser intends the purchased dwelling to be their only or main residence, and
 - the purchaser, their spouse or their civil partner dispose of a major interest in a previous main residence in the three years after the purchase.
19. A previous main residence in paragraphs 3(6) and (7) is one that had been the purchaser's only or main residence at some point during the period of three years before the purchase transaction.
20. Paragraph 4 sets out the test for when a chargeable transaction is a higher rate transaction for a purchaser of a major interest who is not an individual, such as a company. Such a chargeable transaction is a higher rate transaction if Conditions A and B in sub-paragraphs 3(2) and 3(3) are met.
21. Paragraphs 5 to 7 deal with cases where a chargeable transaction involves two or more dwellings.
22. Paragraph 5 sets out the first set of circumstances in which a chargeable transaction by an individual involving more than one dwelling is a higher rate transaction.
23. Sub-paragraph 5(1) sets out that a chargeable transaction by an individual involving more than one dwelling is a higher rate transaction where at least two of the purchased dwellings meet Conditions A and B.
24. Sub-paragraph 5(2) sets out Condition A. Condition A is that the chargeable consideration for the chargeable transaction that is attributable to the dwelling is equal to or more than £40,000.
25. Sub-paragraph 5(3) sets out Condition B. Condition B is met unless the interest purchased is a freehold or superior leasehold that is reversionary on a lease with more than 21 years left to run at the date of the transaction.
26. Paragraph 6 sets out the second set of circumstances in which a chargeable transaction by an individual involving more than one dwelling is a higher rate transaction.
27. Sub-paragraph 6(1) sets out that a chargeable transaction by an individual involving more than one dwelling is a higher rates transaction if:
 - only one of the dwellings meets Condition A and B in paragraph 5,
 - that dwelling (that meets Conditions A and B) is not a replacement of the individuals only or main residence, and
 - the purchaser owns a major interest in another dwelling at the end of the day of purchase which is worth more than £40,000 and is not subject to a lease with more than 21 years remaining.
28. Sub-paragraph 6(2) provides that a purchase of a dwelling is a replacement of a main residence for the purposes of paragraph 6 in the same circumstances as for the purposes of paragraph 3.

29. Paragraph 7 sets out the test for when a chargeable transaction involving more than dwelling is a higher rates transaction for a purchaser who is not an individual, such as a company. Such a chargeable transaction is a higher rate transaction if Conditions A and B in paragraph 5 are met in respect of at least one of the dwellings.

Schedule 4ZA: Part 3: Supplementary Provisions

30. Part 3 provides a number of supplementary rules that explain how the tests in Part 2 should be applied and also provides for changes to procedural rules in respect of a disposal of a previous main residence.
31. Paragraph 8 deals with the case where a transaction is a higher rates transaction on the effective date of the transaction and subsequently ceases to be a higher rates transaction. This is where a sale of a previous main residence happens within three years of the chargeable transaction as described in sub-paragraph 3(7).
32. Sub-paragraph 8(2) provides that a disposal that causes an earlier purchase to cease to be a higher rates transaction cannot also make a later purchase into a replacement of a main residence under sub-paragraph 3(6).
33. Sub-paragraph 8(3) provides an extension to the normal SDLT time limits for amending a return to reflect a chargeable transaction ceasing to be a higher rate transaction. The normal time limit for amendment is 12 months following the filing date. The time limit in the case where paragraph 8 applies is the later of the normal time limit and 3 months after the disposal of the previous main residence.
34. Sub-paragraph 8(4) disapplies the normal requirement to provide HMRC with certain documentation with an amendment to a land transaction return where the amendment is made in respect of a chargeable transaction ceasing to be a higher rates transaction.
35. Paragraph 9 makes provision for how spouses and civil partners are to be treated for the purposes of the schedule.
36. Sub-paragraph 9(1) defines the purchasers to whom paragraph 9 applies. Paragraph 9 applies to purchasers who are married or in a civil partnership who are living together at the time of the purchase.
37. Sub-paragraph 9(2) provides that, for the purposes of determining whether a transaction is a higher rates transaction, the spouse or civil partner of a purchaser is to be treated as if they were purchasing jointly with the purchaser.
38. Sub-paragraph 9(3) provides that the Income Tax definition of spouses and civil partners living together applies. This definition treats as living together any married couple of civil partner who are neither legally separated nor are, in fact, separated in circumstances in which the separation is likely to be permanent.
39. Paragraphs 10 to 13 make provision for settlements and bare trusts.
40. Paragraph 10 prescribes how a purchaser who is a trustee of a settlement with certain kinds of beneficiary should apply the tests in paragraphs 3 to 7.
41. Sub-paragraph 10(1) applies sub-paragraph 10(3) where a purchaser is a trustee and where the dwelling purchased is held in favour of a beneficiary who is entitled to occupy the dwelling or is entitled to the income from the dwelling.

42. Sub-paragraph 10(2) applies sub-paragraph 10(3) where a purchaser is a trustee of a bare trust (meaning a trust where a beneficiary is absolutely entitled against the beneficiary) and the purchased interest in the dwelling is a lease. This provision is needed because the general SDLT position is that a trustee of a bare trust in respect of the grant of a lease is treated as having been granted that lease absolutely by sub-paragraph 3(3) of schedule 16 to Finance Act 2003. Similar provision is not required for bare trustees who purchase freehold interests because sub-paragraph 3(1) of schedule 16 to Finance Act 2003 treats those interests as acquired by the beneficiary.
43. Sub-paragraph 10(3) provides that in relation to the settlements in sub-paragraph 10(1) and the bare trusts described in sub-paragraph 10(2) the beneficiary of the settlement is treated as being the purchaser for the purposes of determining whether the tests in paragraphs 3 to 7 are met.
44. Sub paragraph 10(4) confirms that unless sub-paragraph 10(3) applies the trustee is to be treated as purchaser.
45. Paragraph 11 prescribes how ownership of a dwelling by a trustee affects the tests in paragraphs 3 to 7.
46. Sub-paragraph 11(1) applies sub-paragraph 11(3) where a trustee owns a dwelling and that dwelling is held in favour of a beneficiary who is entitled to occupy the dwelling or is entitled to the income from the dwelling.
47. Sub-paragraph 11(2) applies sub-paragraph 11(3) where a trustee of a bare trust owns a lease over a dwelling.
48. Sub-paragraph 11(3) provides that in relation to the settlements in sub-paragraph 11(1) and the bare trusts in sub-paragraph 11(2) the beneficiary is treated as being the owner for the purposes of determining whether the tests in paragraphs 3 to 7 are met. The beneficiary will also be treated as having disposed of such an interest if the trustee has disposed of it.
49. Paragraph 12 provides for the treatment of interests treated as held by children under the age of 18.
50. Sub-paragraph 12(1) identifies the situations in which sub-paragraph 12(2) applies. These situations are where a child under the age of 18 is treated as purchasing, disposing or owning a dwelling by either paragraphs 10 or 11 or by paragraph 3 of schedule to 16 Finance Act 2003.
51. Sub-paragraphs 12(2) to (4) treat any such interest purchased, disposed or owned as if it were purchased, disposed or owned by the child's parents and any spouse or civil partner living together with one of the child's parents. The Income Tax definition of living together applies.
52. Sub-paragraph 12(5) defines a child as being an individual under the age of 18.
53. Paragraph 13 provides for individual trustees who purchase property on trust for beneficiaries who are not the sort of beneficiary described in paragraph 10. The treatment of such trusts, particular discretionary trusts is the same as for company purchasers under paragraphs 4 and 7.
54. Sub-paragraph 13(1) explains that paragraph 13 applies to individual trustees purchasing a major interest in one or more dwellings. The trustees affected are those of settlements with no beneficiary entitled to occupy the dwelling for life and no beneficiary entitled to the income

from the property.

55. Sub-paragraph 13(2) modifies the tests in paragraphs 4 and 7 for these trustees, removing the requirement that the purchaser is a company. Paragraph 4 will then be met if the trustee is purchasing a major interest in a single dwelling that meets Conditions A and B in paragraph 3. Paragraph 7 will be met if the trustee is purchasing a major interest in more than one dwelling and at least one of the dwellings meets Conditions A and B.
56. Paragraph 14 provides for special treatment for partners purchasing dwellings when they are a joint owner of a dwelling held for the purposes of a partnership.
57. Sub-paragraph 14(1) applies sub-paragraph (2) if the purchaser is a partner in a partnership and the purchase is not a purchase for the purposes of the partnership.
58. Sub-paragraph 14(2) says that the tests in paragraphs 3 and 6 should be applied ignoring any interest in a dwelling held by the purchaser in partnership if the dwelling is held for the purposes of a trade carried on by the partnership.
59. Sub-paragraph 14(3) makes it clear that sub-paragraph 14(2) is a limited modification to the normal SDLT rule that a partner is a joint purchaser of an interest in property purchased by a partnership.
60. Paragraph 15 provides for special treatment for individual purchasers of dwellings who have inherited a jointly-held interest in a dwelling in the three years before the purchase.
61. Sub-paragraph 15(1) sets out when paragraph 15 applies. Paragraph 15 applies where a person becomes jointly entitled to a 50% or smaller share of an interest in the property as a result of inheritance.
62. Sub-paragraph 15(2) provides that the ownership of the inherited property is to be ignored when applying the tests in paragraphs 3(4)(a) and 6(1)(e) if it was inherited during a period of three years before the purchase.
63. Sub-paragraph 15(3) prevents the interest from being ignored if at some time after it was inherited, the person's share of the interest in the property has exceeded 50%.
64. Sub-paragraph 15(4) explains what it means for an interest to exceed a 50% share in the whole interest. Spouses' and civil partners' interests are aggregated for the purposes of this test.
65. Sub-paragraph 15(5) explains what inheritance means in respect of land in England, Wales and Northern Ireland.
66. Paragraph 16 applies certain adaptations to ensure that the provisions in the schedule work similarly for foreign interests in land as they do for land in England, Wales and Northern Ireland.
67. Sub-paragraph 16(1) provides that ownership or disposal of a foreign dwelling counts towards the tests (the relevant provisions are listed at sub-paragraph (3)) for:
 - whether an individual owns another major interest in a dwelling, and
 - whether an individual has disposed of a major interest in a dwelling,
68. Sub-paragraph 16(2) provides that references to major interests, joint entitlement, land transaction, effective date and inheritance should be adapted to suit the law governing the

interest in the land.

69. Sub-paragraph 16(4) applies the same treatment as paragraph 12 in respect of a child who owns property outside of England, Wales or Northern Ireland (in a jurisdiction where a minor is permitted to be the owner of land).
70. Paragraph 17 explains what is meant by a dwelling for the Schedule. These rules are the same as those used for multiple dwellings relief in paragraph 7 of schedule 6B to Finance Act 2003.

Subsections (4) to (9)

71. Subsection (4) provides that where a claim to multiple dwellings relief is made, the higher rates apply in calculating that claim.
72. Subsection (5) provides for the amendments to take effect for chargeable transactions with an effective date on or after 1 April 2016.
73. Subsection (6) provides that the amendments do not have effect if the contract for the purchase of land was entered into before 26 November 2015 and either substantially completed before 1 April 2016 or not excluded by subsection (7).
74. Subsection (7) prescribes situations in which a transaction in pursuance of a contract agreed before 26 November 2015 would still be a higher rate transaction. These situations are
 - where the contract has been varied or assigned to a different person than the person who entered into it on or after 26 November 2015,
 - where completion of the transaction follows the exercise of an option or similar right after that date, or
 - where the land subject to the contract has been assigned or subject to a sub-sale to another person after that date.
75. Subsections (8) and (9) make modifications to the tests for replacement of a main residence test in sub-paragraph 3(6) of schedule 4ZA. The effect of these subsections is to disapply the three year window during which a previous main residence had to be sold before the purchase of a new main residence. This applies for any individual who purchases a new main residence before 26 November 2018.

Background note

76. The higher rates of SDLT for additional dwellings and dwellings purchased by companies was introduced by the Government's to support home ownership.
77. The changes were first announced at the Autumn Statement and Spending Review in 25 November 2015. A consultation was published on 28 December 2015 and concluded on 1 February 2016. This legislation has not previously been published in draft.
78. A document setting out a summary of the responses received has been published alongside this clause on 16 March 2016. This document sets out where the Government has made changes to the design of the rules set out in the consultation. In particular:

- the replacement of a main residence test now uses three-year time limits, rather than the 18 months in the consultation, and
 - there will not be the proposed exemption for large scale investors,
79. Stamp duty land tax applies to purchasers of land in England, Wales and Northern Ireland. There are two main charging regimes, one for transactions in residential property and another for non-residential and mixed transactions.
80. Stamp duty land tax does not apply to moveable assets such as caravans, mobile homes and houseboats.
81. Stamp duty land tax is generally charged on the consideration given for a transaction.
82. This clause introduces a new system of rates applying to the consideration for residential transactions only. These higher rates are set out in the clause. The rates are 3% higher than the equivalent normal residential rates for each of the bands.
83. The higher rates apply to purchases of dwellings. The higher rates apply where an individual owns another major interest in a dwelling at the end of the day of purchase. The higher rates also apply to company purchasers.
84. The higher rates do not apply to:
- purchases with consideration of less than £40,000,
 - leasehold interests originally granted for a term of less than seven years, or
 - freehold or leasehold interests that are reversionary on leases with more than 21 years remaining at the date of purchase.