



HM Revenue  
& Customs

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**Stamp Duty Land Tax: higher rates for purchases of  
additional residential properties**

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Guidance Note  
16 March 2016

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## Chapter 1: Overview

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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 Government consulted on details of the policy design between 28 December 2015 and 1 February 2016.

The Chancellor has today confirmed that these changes will be introduced from 1 April 2016, for purchases of additional residential properties that complete on or after 1 April 2016.

The higher rates will be 3% above the standard rates of SDLT but will not apply to purchases of property under £40,000 or purchases of caravans, mobile homes and houseboats.

Transitional provisions provide that where contracts were exchanged on or before 25 November 2015 and the purchase completes on or after 1 April 2016 the higher rates will not apply. However, these transitional provisions may not apply to certain transactions which involve the variation of a contract, assignments of rights or sub-sales, or which arise from the exercise of certain rights or options.

The legislation will be included in Finance Act 2016 and given provisional effect by a resolution made under the Provisional Collection of the Taxes Act 1968.

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 note provides further details of the changes that are being made and how they will affect purchases of additional residential properties from 1 April 2016.

Further information about these changes can be found on gov.uk at: <https://www.gov.uk/government/collections/budget-2016-tax-related-documents>. The consultation response document has also been published today and can be found at: <https://www.gov.uk/government/consultations/consultation-on-higher-rates-of-stamp-duty-land-tax-sdl-t-on-purchases-of-additional-residential-properties>.

## Chapter 2 – The higher rates of SDLT

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### 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 rate 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 rate 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 rate rules.

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<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.

2.9 For the purposes of the higher rates an off-plan purchase will also count as 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. This will always be a question of fact. A self-contained part of a building will probably be a separate dwelling if the residents of that part can live independently of the residents of the rest of the building, including independent access and domestic facilities.

### **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>5</sup>; and

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<sup>4</sup> Para 17

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

- caravans, houseboats and mobile homes<sup>6</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>7</sup> may be subject to the higher rates if the purchase of those remaining interests meets the conditions.

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<sup>6</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 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.

<sup>7</sup> Para 2(3) Sch 4A FA2003

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

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### 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>8</sup>:

- *Condition A* - the chargeable consideration 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 an interest in another dwelling which has a market value of £40,000 or more and is not subject to a lease which has more than 21 years to run at the date of purchase of the new dwelling; and
- *Conditions 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 rate transaction<sup>9</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>10</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.

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<sup>8</sup> Para 3(1)

<sup>9</sup> Para 3(2)

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

### *Example 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.

### **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>11</sup>.
- 3.8 An interest in a dwelling is a major interest if it is a freehold or leasehold interest<sup>12</sup> and, if it is a leasehold interest, was originally granted for a term of more than seven years<sup>13</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.
- 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>14</sup>.
- 3.11 Each dwelling owned at the end of the day should be looked at separately for the £40,000 condition, several interests below this value which add up to more than £40,000 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>15</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.
- 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 more than £40,000.

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<sup>11</sup> Para 3(4)

<sup>12</sup> Section 117 FA 2003

<sup>13</sup> Para 2(4)

<sup>14</sup> Para 17

<sup>15</sup> Para 3(4)(a)



- 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>16</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>17</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>18</sup>.

### **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>19</sup>.
- 3.17 There are two parts to a replacement of a purchaser's main residence:
- there must be a disposal of the purchaser's or their spouse or civil partner's previous main residence<sup>20</sup>, and
  - the dwelling acquired must be intended to be occupied as the individual's only or main residence<sup>21</sup>.
- 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.
- 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>22</sup>. The second is where the purchase happens first and then the disposal happens later<sup>23</sup>.
- 3.20 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>24</sup> and that other dwelling was, at some time in the three year period, the only or main residence of the purchaser<sup>25</sup>.
- 3.21 There is also a replacement of a main residence if in the three years ending with the purchase, the purchaser's spouse or civil partner disposed of a major interest in another dwelling and that other dwelling was, at some time in the three year period, the only or main residence of the purchaser.

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<sup>16</sup> Para 2 Sch 15 FA 2003

<sup>17</sup> Para 16(1)

<sup>18</sup> Para 16(2)(a)

<sup>19</sup> Para 3(5)

<sup>20</sup> Paras 3(6)(b) and (c) and 3(7)(b) and (c)

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

<sup>22</sup> Para 3(6)

<sup>23</sup> Para 3(7)

<sup>24</sup> Para 3(6)(b)

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

- 3.22 The three year period for this test will not be applied for purchases on or before 26 November 2018<sup>26</sup>. This is a transitional provision so as not to disadvantage those whose last disposal of a main residence was before the announcement of the higher rates on 25 November 2015.
- 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>27</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>28</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.

- 3.25 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>29</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>30</sup>.
- 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 land transaction return

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<sup>26</sup> Finance Bill clause, subsections (8) and (9)

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

<sup>28</sup> Para 2(4)

<sup>29</sup> Para 3(7)(b)

<sup>30</sup> Para 3(7)(c)

was submitted. 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>31</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 does not meet Condition D at the date of the transaction. 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 additional tax paid.

- 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>32</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 The rules require the dwelling disposed of to be the purchaser's only or main residence at some time during the period of three years before the purchase.
- 3.31 In cases where an individual resides at only one dwelling, that will be their only or main residence.
- 3.32 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.
- 3.33 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.*

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<sup>31</sup> Para 8(3)

<sup>32</sup> Para 8(2)

- 3.34 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?
- 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 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>33</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

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<sup>33</sup> Para 3 Sch 16 FA 2003 and para 11(2) and (3) Sch 4ZA FA 2003

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>34</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>35</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>36</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**

- 3.42 Where a transaction is entered into by joint purchasers the higher rates will apply if the transaction would be a higher rate transaction for any of the purchasers considered individually<sup>37</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.
- 3.44 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>38</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>39</sup>.

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<sup>34</sup> Para 12

<sup>35</sup> Para 16(4)

<sup>36</sup> Para 11(1) and (3)

<sup>37</sup> Para 2(3)

<sup>38</sup> Para 9

<sup>39</sup> Para 9(3) and section 1011 Income Tax Act 2007

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>40</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>41</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>42</sup>. This is most likely the case where an individual is buying a main residence for themselves.

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>43</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>44</sup> provided that:

- the beneficiary became a joint owner of the interest by inheritance<sup>45</sup>,

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<sup>40</sup> Para 2 Sch 15 FA 2003

<sup>41</sup> Para 14

<sup>42</sup> Para 14(1)

<sup>43</sup> Para 14(2)

<sup>44</sup> Para 15(2)

<sup>45</sup> Para 15(1)

- 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>46</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.
- 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.

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<sup>46</sup> Para 15(4)

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

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### 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.
- 4.2 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 the 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 an interest in another dwelling which has a market value of £40,000 or more and is not subject to a lease which has more than 21 years to run at the date of purchase of the new dwelling; and
  - *Conditions D* - the dwelling being purchased is not replacing the purchaser's only or main residence<sup>47</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.

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<sup>47</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.



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

- 4.6 The higher rates of tax will apply if two or more of the dwellings purchased meet Conditions A and B<sup>48</sup>. These Conditions A and B are the same as those for a purchase of a single dwelling, except that Condition A is that the amount of chargeable consideration *attributable* to a dwelling *on a just and reasonable basis* is more than £40,000<sup>49</sup>.
- 4.7 If two or more dwellings are purchased in the same transaction and at least two of them are worth more than £40,000 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**

- 4.8 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>50</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 more than £40,000 and which is not reversionary on a long lease at the end of the day of the transaction<sup>51</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>52</sup>.
- 4.9 This test treats the purchase of a substantive interest in a dwelling (that meets Conditions A and B) which is accompanied by minor 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.
- 4.10 The meaning of replacement of a main residence is the same here as above.
- 4.11 Condition C applies with the same interests treated as owned by the individual as in 3.37 to 3.41 above.

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<sup>48</sup> Para 5(1)(c)

<sup>49</sup> Para 5(2)

<sup>50</sup> Para 6(1)(c)

<sup>51</sup> Para 6(1)(e)

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

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

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### Companies and others 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>53</sup>:
- *Condition A* - the dwelling purchased is worth £40,000 or more;
  - *Condition B* - the dwelling is not subject to lease which has more than 21 years to run on the date of purchase;
- 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>54</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>55</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>56</sup>.

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<sup>53</sup> Paras 4 and 7

<sup>54</sup> Para 3 Sch 16 FA 2003

<sup>55</sup> Para 10(1)(c)

<sup>56</sup> Para 3(1) Sch 16 FA 2003 and para 10(2) and (3) Sch 4ZA

- 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>57</sup>.
- 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 more than £40,000 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>58</sup>. That is, where a purchased dwelling meets Condition A (consideration paid is more than £40,000) or 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 more than £40,000 (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 dwelling are purchased in a single or linked transaction multiple dwelling relief (FA2003/Schedule 6B) can be claimed. The higher rates will apply to claims for multiple dwellings relief. Where 6 or more dwellings are

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<sup>57</sup> Para 10(3)

<sup>58</sup> Para 13

purchased in a single transaction the purchaser can choose whether to apply the non-residential rates of SDLT<sup>59</sup>.

*Example 8*

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

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<sup>59</sup> Section 116(7) FA 2003

## Chapter 6: Filing and amendments

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### 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>60</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 be claimed by completing a SDLT repayment request form. This will be available on gov.uk from 1 April 2016. 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.
- 6.7 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.

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<sup>60</sup> Section 76(1) FA 2003

6.8 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

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- 7.1 Where applicable, the higher rates will apply to all purchases that complete on or after 1 April 2016.
- 7.2 Transition 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 on that date.
- 7.3 The transitional rules will not apply where contracts were entered into not 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 2016 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 FA03/SCH19/PARA3.
- 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 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 would 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

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- 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. However, if you sell your previous home 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, i.e. sold a current main residence and purchased a new one).
- 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 you main residence, i.e. sold you current main residence and purchased a new one.
- Q4. I 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.
- 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, the higher rates will apply to the total amount you give for your brother share, including any mortgage debt that you take on.
- 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. If you live in accommodation that you do not own, it will not count in determining whether you are purchasing an additional residential property. However, as you already own a residential property the higher rates will apply to the purchase of your new home.
- 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. Provided you purchase your new main residence within 3 years of the sale of your previous main residence, you are considered to be replacing your main residence, and therefore the higher rates will not apply.

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 shared ownership property and wish to increase my share to 50%. 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 with 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 all property owned by either of you is treated as owned jointly. The purchase of the flat will therefore be classed as an additional residential property for both of you.

- 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 are separated and this is likely to be permanent, and your previous main residence is sold within 3 years of purchasing your new one, a refund on 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 the 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.
- 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, i.e. sold your current main residence and purchased a new one.
- 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 dwelling 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% for purchase up to £125,000.
- 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?
- Q23. 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 dwelling

relief the SDLT due in based on the average value of each flat, rather than the total amount paid for both.

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 rate 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 rate 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 rate 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 a share 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 apply?

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. 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 you will be liable to the higher rates unless the purchase is a replacement of the beneficiaries' main residence.

Q29. We are trustees of a discretionary trust. 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 rate 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 – code 04 in box 1, instead of code 01 in box 1 which you would have chosen previously. As previously, the return will then calculate the tax due. The guidance for completing the SDLT form will include information on the new code and will be updated ahead of 1<sup>st</sup> April.
- 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 will be available on GOV.UK on 1<sup>st</sup> April. 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 will be available on GOV.UK from 1<sup>st</sup> April, sets out all the information that HMRC will need to process a repayment.
- Q34. Will I be paid compensation if the refund takes longer than 15 working days?
- A34. HMRC does not give out 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.