

Clause X and Schedule X: Higher rates for additional dwellings

Summary

1. This clause contains provisions to amend Schedule 4ZA of the Finance Act 2003 which covers the higher rates for additional dwellings etc of stamp duty land tax (SDLT) that apply to certain purchases of residential property.

Details of the Clause

2. The clause introduces Schedule 1 which amends Schedule 4ZA of the Finance Act 2003.

Details of the Schedule

3. Paragraph 1 of Schedule 1 makes provision to amend Schedule 4ZA of the Finance Act 2003 [the `main Schedule`] which covers the higher rates for additional dwellings etc of SDLT [HRAD].
4. Paragraph 2 of Schedule 1 will counteract abuse.
5. Sub-paragraph 2(1) amends Condition D in paragraph 3 of the main Schedule. Condition D deals with relief from HRAD when an individual buys a `new` main residence having disposed of an `old` main residence [`replacement main residence relief`].
6. Sub-paragraph 2(2)(a) inserts new sub-paragraph 3(6)(ba) into the main Schedule. This will prevent replacement main residence relief being given where the seller, their spouse or civil partner retains a major interest in the old main residence.
7. Sub-paragraph 2(2)(b) makes a consequential change to sub-paragraph 3(6)(c) of the main Schedule to accommodate new sub-paragraph 3(6)(ba).
8. Sub-paragraph 2(3) inserts new sub-paragraph 3(6A) into the main Schedule. This will stop new sub-paragraph 3(6)(ba) applying if the spouses or civil partners are not living together at the date of disposal.
9. Sub-paragraph 2(4) inserts new sub-paragraph 3(7)(ba) into the main Schedule. This will prevent replacement main residence relief being given if the seller, their spouse or civil partner retains a major interest in the old main residence.
10. Sub-paragraph 2(5) inserts new sub-paragraph 7(8) into the main Schedule. This will prevent new sub-paragraph 3(7)(ba) applying if the spouses or civil partners are not living together at the date of disposal. Sub-paragraph 9(3) of the main Schedule gives the meaning of "living together".

11. Paragraph 3 of Schedule 1 makes provision for a new paragraph 7A of the main Schedule. In certain circumstances this excludes from HRAD the purchase of further interests in the same dwelling.
12. New sub-paragraph 7A(1) has the effect of excluding a purchase from HRAD where, subject to certain other requirements, the purchaser had a major interest in the same dwelling before the new purchase and the same dwelling was the purchaser's only or main residence in the three years preceding purchase. Such a dwelling is called a 'relevant purchased dwelling'.
13. New sub-paragraph 7A(2) requires that the purchased interest must take the form of a freehold or a leasehold of 21 years or more.
14. New sub-paragraph 7A(3) prevents the exclusion applying where the purchaser is beneficially entitled as a joint tenant to the relevant purchased dwelling and their interest is less than 25%.
15. New sub-paragraph 7A(4) prevents the exclusion applying if the purchaser is beneficially entitled as a tenant in common or coparcener to the relevant purchased dwelling and their interest is less than 25%.
16. New sub-paragraph 7A(5) defines 'relevant purchased dwelling'.
17. Paragraph 4 of Schedule 1 inserts a new paragraph 9A into the main Schedule.
18. New paragraph 9A means that HRAD will not apply to exchanges of interests between spouses or civil partners.
19. Paragraph 5 inserts new paragraph 9B into the main Schedule. New paragraph 9B changes the way that interests retained by a former spouse or former civil partner upon divorce or dissolution of a civil partnership are treated.
20. New sub-paragraph 9B(1) sets out the situation in which new paragraph 9B applies. New paragraph 9B applies where a major interest in a dwelling, owned by A, is subject to a "property adjustment order" in favour of another person, B, and the dwelling is B's only or main residence, but not A's only or main residence.
21. New sub-paragraph 9B(2) disregards an interest held by A in the circumstances described in new sub-paragraph 9B(1).
22. New sub-paragraph 9B(3) defines property adjustment orders.
23. Paragraph 6 of Schedule 1 makes specific provision for property held by trustees of children whose affairs are subject to arrangements such as those provided by the Court of Protection.
24. Sub-paragraph 6(1) inserts new sub-paragraphs 12(1A) and 12(1B) of the main Schedule. New sub-paragraph 12(1A) disapplies paragraph 12 where a trustee appointed by the court undertakes actions in respect of a property in pursuit of a relevant court appointment. New sub-paragraph 12(1B) defines a "relevant court appointment".
25. Sub-paragraph 6(2) inserts new sub-paragraphs 17(5A) and 17(5B) of the main Schedule and prevents property outside of England, Wales and Northern Ireland held by a child from being attributed to the child's parents where the property is held on behalf of the child in pursuit of a relevant court appointment.

26. Paragraphs 7 to 11 make minor and consequential amendments.
27. Paragraph 12 amends paragraph 12 of the main Schedule. It clarifies that paragraph 12 applies to parents of a child, and also applies to their spouse or civil partner who is not a parent of the child but who is living together with the parent.
28. Paragraph 13 omits the word Wales from the heading before paragraph 17 of the main Schedule, taking effect from the date that SDLT ceases to apply to property purchased in Wales, per sub-paragraph 16(4).
29. Paragraph 14 amends paragraph 17 and inserts new sub-paragraph 17(1A) into the main Schedule. It indicates how the terms “major interest”, “land transaction” and “effective date” will apply to dwellings situated in Wales once SDLT no longer applies in Wales.
30. Paragraph 15 makes consequential amendment to the commencement provisions of section 128 of the Finance Act 2016 to accommodate other changes made by Schedule 1.
31. Paragraph 16 provides for the commencement of the amendments made by Schedule 1. The amendments made by Schedule 1, except those relating to SDLT ceasing to apply in Wales, have effect on transactions entered into on or after 22 November 2017.
32. Sub-paragraphs 16(2) and (3) prevent the changes made by paragraph 2, from applying where the contract for it was entered into before 22 November and there was no variation to the contract etc on or after 22 November.
33. Sub-paragraph 16(4) deals with commencement in relation to the paragraphs relating to SDLT ceasing to apply to property in Wales when section 16(2) of the Wales Act 2014 comes into effect.

Background note

34. The main Schedule was inserted into the Finance Act 2003 by section 128 of the 2016 Finance Act. The main Schedule contains legislation to charge higher rates of SDLT when a company buys residential property and when individuals who already own residential property do so.
35. The changes made by this legislation will ensure that the main Schedule works better when someone -
 - gets divorced,
 - exchanges property with a spouse,
 - adds to an existing interest in their main residence, or
 - is a child whose affairs are subject to the Court of Protection etc.
36. The changes will also prevent abuse by requiring the purchaser to dispose of the whole of their former main residence, and to do so to someone who is not their spouse, before benefitting from replacement main residence relief.

