Higher rates of Stamp Duty Land Tax for purchases of additional properties -

A Guide
The Law Society of Northern Ireland recognises that the introduction of the higher rates for purchases of additional properties has added to the ever-increasing complexities of advising your clients on property transactions.

Accordingly, the Law Society working in conjunction with Moore Stephens (NI) LLP have created a guidance document to assist solicitors in responding to queries and cases they may encounter when advising on property transactions.

The provisions in relation to the higher rates for purchases of additional properties can be found at Schedule 4ZA of Finance Act 2003.

The following guidance document provides summary flowcharts to help guide solicitors through the legislation and assist them in determining whether the higher rates will apply.

The guidance document deals with the following transactions:

- First-time buyers relief
- Single dwelling transactions by individuals
- Multiple dwelling transactions by individuals
- Transactions involving companies, and
- Transactions involving trusts

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Condition 1: Is the main subject matter of the transaction a major interest in a single dwelling?

- No: First-Time Buyers relief does not apply
- Yes: Condition 2: Is the relevant consideration for the transaction more than £500,000?

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- No: First-Time Buyers relief does not apply
- Yes: Condition 3: Is the purchaser(s) a first-time buyer who intends to occupy the dwelling as their only or main residence?

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- No: First-Time Buyers relief does not apply
- Yes: Condition 4: Is the transaction linked to another land transaction?

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- No: Is the transaction a higher rate transaction for the purposes of the 3% surcharge?
  - No: First-Time Buyers relief does apply
  - Yes: Is the main subject of the linked transaction an interest that is or forms part of the garden or grounds of the purchased dwelling and the purchaser is also purchasing the main dwelling?
    - No: First-Time Buyers relief does not apply
    - Yes: First-Time Buyers relief does not apply

Relevant consideration | Percentage
--- | ---
Up to £300,000 | 0%
£300,000–£500,000 | 5%
1. The main subject matter of a transaction is not a major interest, if it is a term of years absolute which has less than 21 years to run at the beginning of the day after the effective date of the transaction.

2. A building or part of a building counts as a dwelling if:
   (a) it is used or suitable for use as a single dwelling, or
   (b) it is in the process of being constructed or adapted for such use.

3. Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on that land) is taken to be part of that dwelling.

4. Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.

5. The main subject-matter of a transaction is also taken to consist of a major interest in a dwelling if:
   (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
   (b) the main subject-matter of the transaction consists of a major interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
   (c) construction or adaptation of the building, or part of a building, has not begun by the time the contract is substantially performed.

6. First-time buyer means an individual who:
   (a) has not previously been a purchaser in relation to a land transaction the main subject-matter of which was a major interest in a dwelling,
   (b) has not previously acquired an equivalent interest in a dwelling situated in a country or territory outside England, Wales and Northern Ireland,
   (c) has not previously been, or been one of the persons who was, “the person” for the purposes of section 71A or 73 in a case where the main subject-matter of the first transaction within the meaning of the section concerned was a major interest in a dwelling, and
   (d) would not have been such a person for those purposes in such a case if the provisions mentioned in paragraph (c) had been in force, and had had effect in the country or territory concerned at all material times (subject, where required, to appropriate modifications).

7. Consideration required of what constitutes a ‘main residence’ – case law of Frost v Feltham (5STC10) is useful.
Higher rates of SDLT for purchases of additional properties

Individuals – Single Dwelling Transactions

**Condition A:** Is the chargeable consideration £40,000 or more?
- Yes  
  - See Note 1
- No

**Condition B:** Is the dwelling subject to a reversionary lease which has more than 21 years to run on the date of purchase?  
- Yes  
  - Higher rates do not apply
- No

**Condition C:** Does the purchaser own a major interest in another dwelling which has a market value of £40,000 or more and is not subject to a lease which has more than 21 years to run at the date of purchase of the new dwelling?  
- Yes  
  - Higher rates do not apply
- No

**Condition D:** Is the dwelling being purchased replacing the purchaser’s only or main residence?  
- Yes  
  - Higher rates do apply
- No

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**Purchase price of property**

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See Notes 2 & 3.
Notes
1. 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.
2. A purchase of a freehold or leasehold interest that is in itself subject to a reversionary lease with more than 21 years remaining will not be chargeable at higher rates.
3. Cases involving lease extensions will require consideration.
4. An interest in a dwelling is a major interest if it is a freehold or leasehold interest and, if it is a leasehold interest, was originally granted for a term of more than 7 years.
5. The valuation is the market value of the interest owned, or treated as owned by the individual in the dwelling. Loans related to the dwelling, such as mortgages, are ignored when calculating market value.
6. The land that has to be valued is the dwelling itself, the gardens and grounds (including buildings and structures in the garden or grounds) and any other land that subsists for the benefit of the dwelling.
7. Each dwelling owned should be looked at separately for the £40,000 or more condition. Several interests below this value which add up to £40,000 or more will not cause Condition C to be met.
8. The interest held must be an interest in another dwelling. 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.
9. If an individual is a joint owner of another dwelling then they may meet Condition C, if the interest in land is a major interest not subject to a lease longer than 21 years and the interest that they hold is worth £40,000 or more.
10. Consideration of legal and beneficial ownership is important for the purposes of Condition C. Furthermore, issues of minor children’s interests being afforded to their parents and the interests of life tenants in IIP trusts require consideration for the purposes of Condition C.
11. An interest in a dwelling outside the UK is counted for the purposes of Condition C.
12. An individual holding a mixed residential and non-residential property will meet Condition C, if the property contains a dwelling. Therefore consideration of the definition of a dwelling in these circumstances is required.
13. There are special rules for applying Condition C in respect of interests held by a partnership which will require further consideration in such cases. Client checklist should be updated to include question to ascertain this point.
14. There are also special rules for applying Condition C in cases where a major interest is inherited in the last 3 years and further consideration will be required in such cases. Client checklist should be updated to include question to ascertain this point.
15. There are 2 parts to a replacement of a purchaser’s main residence:
   • There must be a disposal of a major interest in the purchaser’s or their spouse or civil partner’s previous main residence (the test for the old dwelling is a question of objective fact); and
   • The dwelling acquired must be intended to be occupied as the individual’s only or main residence (the test in respect of the new dwelling purchased is a question of intention at the time of purchase).
16. Consideration required of what constitutes a ‘main residence’ – case law of Frost v Feltham (SSTC10) is useful.
17. The disposal of the previous main residence does not have to be by way of sale, e.g. it could be by way of a gift or transferred under a court order as part of a divorce settlement.
18. There are 2 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. The second is where the purchase happens first and then the disposal happens after.
19. There are different rules depending on whether the purchase took place before or after 27 November 2018.
20. It is only the first acquisition of a new main residence that is treated as a replacement, so if 2 purchase transactions are entered into within 3 years of a disposal (or on or before 26 November 2018), only the first acquisition of a new main residence is a replacement.
21. 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.
Higher rates of SDLT for purchases of additional properties

**Individuals – Multiple Dwelling Transactions**

Is the additional dwelling contained in the same building or grounds as the main building?

Yes → When apportioned on a just and reasonable basis, is the total chargeable consideration attributable to the principal dwelling (and garden and grounds)?

Yes → The other dwellings purchased will be ‘subsidiary dwellings’. See Note 1

No → Do at least 2 of the purchased dwellings meet condition A, B & C?

Yes → Condition A: Is the chargeable consideration attributable to a dwelling £40,000 or more, when calculated on a just and reasonable basis?

Yes → Condition B: Is the dwelling subject to a reversionary lease which has more than 21 years to run on the date of purchase? See Notes 3 & 4

Yes → Condition C: Is the dwelling not subsidiary to any of the other purchased dwellings?

No → Consideration of ‘Multiple Dwellings Relief’ required See Note 23

Yes → Does the purchaser have a major interest in a dwelling other than one of the purchased dwellings, which has a market value of £40,000 or more (which is not subject to a lease which has more than 21 years? See Notes 5–11

Yes → Does 1 of the purchased dwellings meet condition A, B & C?

Yes → Is the dwelling (which meets those conditions) a replacement for the purchaser’s only or main residence? See Notes 5–11

No → Higher rates do not apply

No → Higher rates do not apply

No → Higher rates do not apply

Purchase price of property | Rate paid on portion of price within each band
--- | ---
Up to £125,000 | 3% (0%)
Over £125,000 and up to £250,000 | 5% (2%)
Over £250,000 and up to £525,000 | 8% (5%)
Over £525,000 and up to £925,000 | 13% (10%)
Over £925,000 and up to £1,500,000 | 15% (12%)
Over £1,500,000 | Higher rates do apply
Notes

1. Where there is an acquisition of a subsidiary dwelling, the combined dwellings will be treated as one dwelling and the normal rules should be applied. See Individuals- Single purchase flowchart.

2. Where an individual purchaser purchases 2 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 1 dwelling will either be liable to the higher rates of tax or it will not. The rules do not allow for a single transaction to be a combination of higher and normal residential rates.

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

4. Cases involving lease extensions will require consideration.

5. There are 2 parts to a replacement of a purchaser's main residence:
   • There must be a disposal of a major interest in the purchaser's or their spouse or civil partner's previous main residence (the test for the old dwelling is a question of objective fact); and
   • The dwelling acquired must be intended to be occupied as the individual's only or main residence (the test in respect of the new dwelling purchased is a question of intention at the time of purchase).

6. Consideration required of what constitutes a 'main residence' – case law of Frost v Feltham (SSTC10) is useful.

7. The disposal of the previous main residence does not have to be by way of sale, e.g. it could be by way of a gift or transferred under a court order as part of a divorce settlement.

8. There are 2 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. The second is where the purchase happens first and then the disposal happens after.

9. There are different rules depending on whether the purchase took place before or after 27 November 2018.

10. It is only the first acquisition of a new main residence that is treated as a replacement, so if 2 purchase transactions are entered into within 3 years of a disposal (or on or before 26 November 2018), only the first acquisition of a new main residence is a replacement.

11. 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.

12. An interest in a dwelling is a major interest if it is a freehold or leasehold interest and, if it is a leasehold interest, was originally granted for a term of more than 7 years.

13. The valuation is the market value of the interest owned, or treated as owned by the individual in the dwelling. Loans related to the dwelling, such as mortgages, are ignored when calculating market value.

14. The land that has to be valued is the dwelling itself, the gardens and grounds (including buildings and structures in the garden or grounds) and any other land that subsists for the benefit of the dwelling.

15. Each dwelling owned should be looked at separately for the £40,000 or more condition. Several interests below this value which add up to £40,000 or more will not cause this condition to be met.

16. The interest held must be an interest in another dwelling. A further interest owned in the same dwelling in which a major interest has been purchased will not, on its own, cause this condition to be met.

17. If an individual is a joint owner of another dwelling then they may meet this condition, if the interest in land is a major interest not subject to a lease longer than 21 years and the interest that they hold is worth £40,000 or more.

18. Consideration of legal and beneficial ownership is important for the purposes of this condition.

19. An interest in a dwelling outside the UK is counted for the purposes of this condition.

20. An individual holding a mixed residential and non-residential property will meet this condition, if the property contains a dwelling. Therefore consideration of the definition of a dwelling in these circumstances is required.

21. There are special rules for applying this condition in respect of interests held by a partnership which will require further consideration in such cases. Client checklist should be updated to include question to ascertain this point.

22. There are also special rules for applying this condition in cases where a major interest is inherited in the last 3 years and further consideration will be required in such cases. Client checklist should be updated to include question to ascertain this point.

23. Where 2 or more dwellings are purchased in a single or linked transaction, multiple dwellings relief¹ can be claimed. Where 6 or more dwellings are purchased in a single transaction, the purchaser can choose whether to apply the non-residential rates of SDLT or claim multiple dwellings relief and pay the higher rates.

¹ Schedule 6B FA 2003

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Higher rates of SDLT for purchases of additional properties

Transactions involving Companies

Condition A: Is the chargeable consideration £40,000 or more?

Yes
- See Note 1

No
- Higher rates apply

Condition B: Is the dwelling subject to a reversionary lease which has more than 21 years to run on the date of purchase? See Notes 2 & 3

Yes
- Higher rates apply

No
- Higher rates do not apply

Is the chargeable consideration more than £500,000?

No
- Higher rates do not apply

Yes
- Special 15% rate applied

Do any of the ‘ATED’ exemptions apply? See Note 4

Yes
- Special 15% rate applied

No
- Special 15% rate applied

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

3. Cases involving lease extensions will require consideration.

4. There are several important exemptions from the higher rate of SDLT under the ‘ATED’ provisions, including acquisitions of residential property:
   - which is used exclusively for the purposes of a property rental, property development or property trading business (so long as the property is not occupied by a non-qualifying individual);
   - which is to be made available to the public as part of a trade conducted on a commercial basis with a view to profit (e.g. a stately home or a wedding venue);
   - via re-possession by the mortgage lender following default on the loan;
   - for the intention of housing one or more employees (and their families if necessary);
   - to be used as a farmhouse and forms part of land that is occupied for the purposes of a qualifying farming trade.

5. In the case of multiple dwelling transactions, if none of the interests in dwellings meet both Conditions A & B, then the higher rates do not apply. If there is a multiple purchase by a company and if Conditions A & B are met in respect of at least 1 of the dwellings, the higher rates will apply.
Higher rates of SDLT for purchases of additional properties

Transactions involving Trusts

Is the purchaser acting as trustee of a settlement and under the terms of the settlement, a beneficiary will be entitled to occupy the dwelling/dwellings for life or income in respect of the dwelling/dwellings?

Yes

No

The beneficiary, as opposed to the trustees, is to be treated as the purchaser.

Refer to Individuals – Single or Multiple Dwelling Transactions

Is the purchaser acting as trustee of a bare trust and the subject matter of the transaction consists of a term of years absolute in a dwelling?

Yes

No

Condition A: Is the chargeable consideration £40,000 or more?

No

Yes

Condition B: Is the dwelling subject to a reversionary lease which has more than 21 years to run on the date of purchase?

See Notes 2 & 3

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When the higher rates will not apply:
- Non-residential or mixed use properties;
- Transactions where the consideration is less than £40,000;
- In most cases, for purchases of caravans, houseboats and mobile homes¹

What is a ‘dwelling’?
A dwelling is defined 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.

The gardens and grounds of the dwelling or land that is to be enjoyed with the dwelling (including buildings) are to be taken as part of the dwelling. However, a transaction in such a building or land without the purchase of the actual dwelling will not be liable to the higher rates.

Holiday homes and furnished holiday lettings are also considered to be dwellings.

An off-plan purchase will also count as a dwelling where:
- Contracts have been exchanged for the purchase of a building, or part of building, which is to be constructed or adapted for use as a single dwelling,
- The contract is substantially performed; and
- At the time of substantial performance, the construction or adaption of the building has not yet begun.

Joint purchasers/married couples & civil partners:
- If any of the joint purchasers are liable at higher rates, the higher rate applies to the whole property.

- Applies to joint tenants and tenants in common.
- Married couples and civil partners are (effectively) treated as one person. This does not apply if legally separated under court order, or deed of separation or in circumstances where the separation is likely to be permanent.
- A partner is a joint purchaser of a dwelling acquired by the partnership.

Claiming a repayment:
- If previous main residence is sold within 3 years of paying higher rates on new main residence purchase, 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 of the return, whichever is later.
- Client checklists should be updated to include question to ascertain this point.

¹ These assets are usually chattels and any payment in respect of the plot is usually for a license. Therefore, they are not usually chargeable to SDLT. If they become sufficiently fixed to the land that they become part of the land, then HMRC may contend that the structure is a ‘dwelling’ for these purposes.