



FIELD COURT TAX CHAMBERS

## **The additional charge to SDLT<sup>1</sup>**

*The proposals on the higher SDLT charge for second homes are riddled with anomalies*

The proposals regarding SDLT in the Autumn Statement regarding buy to let properties and second homes have been supplemented by further announcements.

The 3% increase in the rates of SDLT across the board for these purposes (although not for purchases under £40,000) will apply to all contracts entered into on or after 26 November 2015 where completion takes place after 1 April 2016.

That is clear enough, but there are also some transitional rules – although they do not seem to add anything. For example, the new rates will not apply to contracts entered into before 26 November or where completion takes place before 1 April 2016. Well, yes. The only difference would seem to be the acknowledgement by HMRC that completion will be treated as including substantial performance.

It is also confirmed that these new rates will apply to foreign investors and to anybody who owns another property anywhere in the world if they purchase an additional property in the UK.

This seems to be rather a complex idea. A foreign person buying property in the UK ought to be able to understand which rate of SDLT will apply to his purchase. He now needs to be interrogated regarding his property holdings in other countries. What if he lives in rented accommodation in another country? And what if there are other properties in a trust or a company which he uses – or lets.

Given that an overseas purchaser by definition lives abroad, he must live somewhere; so presumably, unless he is homeless, he will be liable to the 3% surcharge. Do we not feel that Mr Osborne is getting a little carried away here?

Some of these questions have been answered by the consultation document published on 28 December. This makes it clear that the higher rate will not apply where the individual purchaser only owns one residential property, irrespective of the intended use of the property. So where a person who lives in rented accommodation buys a residential property as an investment, he will not have to pay the higher rate – but I wonder what “rented accommodation” means. Would it include a long lease?

Nor will the higher rate apply where an individual is replacing his main residence. If the individual sells his main residence within 18 months of the purchase of a new property which is going to be his new main residence, that will be regarded as the replacement of a main residence – and it will not matter how many other properties he may have.

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The Treasury seems to think that identifying the main residence is quite simple: ‘In most cases the position will be clear.’ This must be some kind of code. Either that or the person drafting the consultation document is not up to date with his reading of tax cases. In reality, the unbelievably contradictory case law on the subject means this is going to be a seriously difficult problem. To make matters worse, there will be no right of election, so the main residence for SDLT purposes may differ from that for CGT.

The new rules only apply to purchases of residential property, but there is an exemption where six or more residential properties are bought in a single transaction. Therefore, buying one buy to let property is a bad thing and needs to be penalised – but buying seven is a good thing and deserves a reward. Um. I think I need a lie down.

The treatment of trusts is particularly troublesome. The general idea is that if a beneficiary has an interest in possession in the property, he will be liable to the SDLT at the higher rates. (That will be popular; I wonder where is he supposed to get the money from?) Where there is no interest in possession in the property, the trustees will be liable to the higher rates – apparently whatever the circumstances.

It may be remembered that stamp duty used to be charged on the slab basis – if you crossed the threshold you paid the higher rate on the whole of the consideration. HMRC acknowledged the unfairness this created and now charge SDLT on the slice basis, so that you only pay the increased rates on the consideration over the relevant limits. So, what happens with the £40,000 exemption from this 3% rate? The old slab basis applies. Transactions under £40,000 are not subject to the higher rate of SDLT – but anything over £40,000 is chargeable on the full amount. Therefore, a purchase for £41,000 will cost stamp duty of £1,230. However, I dare say this is only one of the screaming anomalies which will be fixed during the consultation process.

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