

SDLT Additional Rates

James Bromley | 4 May 2016

At the Autumn Statement in November 2015, new additional SDLT rates were announced which will be relevant to buyers of additional properties (such as second homes and buy-to-let investments). We have previously published two Q&A briefings outlining the scope of the new rates (available [here](#) and [here](#)).

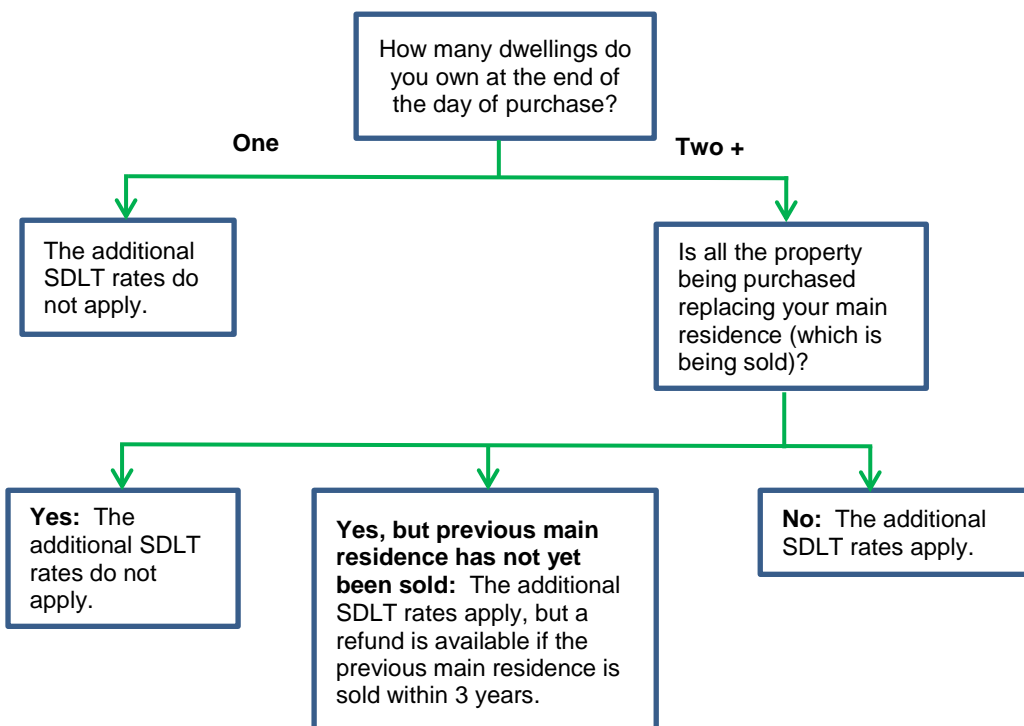
The government has now published draft legislation and accompanying guidance to clarify some outstanding points. This briefing considers some key questions relating to the new additional SDLT rates in light of these developments.

Notwithstanding the answers provided below, areas of real complexity in the new rules remain. Buyers are recommended to seek specialist SDLT advice as early as possible before committing to a purchase, particularly given the increasingly substantial amounts of tax at stake.

“
The draft legislation has revealed a number of surprises and uncertainties.
”

Q. When do the additional SDLT rates apply?

For most buyers who are individuals, the main test for whether the rates will apply is as follows:



Buyers who are not individuals (for example, corporate buyers) will first need to check whether the 15% flat rate of SDLT will be charged before considering the new additional rates. The 15% rate can be charged on certain purchases of residential properties over £500,000 by corporate buyers, but there are a number of possible exceptions. If the 15% rates do not apply for any reason, corporate buyers can now generally expect to pay the new additional rates (even if they own no other properties).

Q. What if I'm still not clear whether the new rates apply?

The short answer is that you are not alone! The draft legislation has revealed a number of surprises and uncertainties. There are two areas in particular where the government has confirmed it will amend the draft legislation.

The first area concerns properties including more than one dwelling, such as a house with a separate annex. In such a case, a buyer might find themselves with two dwellings at the end of the date of purchase which together do not replace their previous main residence. Applying the main test set out above strictly, the new rates would therefore apply. This appears to have been an unintended consequence of the way the legislation was drafted. As a result, the government has confirmed that properties with annexes will not be subject to the additional rates if certain conditions are met.

The second area concerns buyers who are not individuals. This has the potential to cause problems in alternative finance arrangements, which are arrangements that do not involve the payment and receipt of interest (such as Sharia compliant mortgages). These arrangements often involve a corporate finance provider purchasing the property, which means that the additional rates could apply under the draft legislation since the buyer is not an individual. Again, this appears to have been unintended and the government has confirmed that alternative finance arrangements will not fall within the additional rates of SDLT just because the buyer is not an individual.

Q. How can I tell if a property is my "main residence"?

Many buyers will find themselves needing to establish that the property they are buying is a replacement for their "main residence". This will be judged as a matter of fact. The type of evidence which would be considered could include, for example, the relative amount of time spent and usage of utilities in different properties, correspondence addresses used, whether the property is furnished in the sort of way a main residence would be expected to be, and proximity to places of work or schools.

Q. What about properties outside of England, Wales and Northern Ireland?

All residential properties worldwide must be considered when applying the main test set out above, not just those that would be subject to SDLT in England, Wales and Northern Ireland.

Q. What if I have a spouse/civil partner or children?

If a buyer has a spouse or civil partner, any other properties held by them may be treated as owned directly by the buyer for the purposes of applying the additional rates test. Even if a buyer owns no other properties anywhere in the world, they could nevertheless be liable for the additional SDLT rates if their spouse or civil partner owns any other residential properties. Similarly, if the buyer is a minor, then any properties held by their parents can also be relevant.

Q. What about non-residential or mixed use properties?

The additional SDLT rates are targeted only at residential properties. Purchases of genuine non-residential or mixed use properties (even those that may be converted to residential later) will therefore not be subject to the additional SDLT rates. By the same rationale, any non-residential properties already owned by a buyer will not be relevant when applying the above test.

In this context, buyers should be aware that the boundary between non-residential/mixed use properties and residential properties can be complicated and occasionally counter-intuitive, so specialist advice should always be sought in this area.

Q. What if I buy through a trust?

In general, trustees of trusts with beneficiaries who have little interest in the property (for example, with no right to occupy or entitlement to property income) will be charged the additional rates when buying a residential property. Trust purchasers whose beneficiaries have a more direct interest in the property (such as bare trusts or nominee arrangements) will only be subject to the additional rates if their beneficiaries fall within the main additional rates test.

Similarly, if a buyer already has a beneficial interest in another property, it will be necessary to consider the extent of their beneficial entitlements to that property in order to determine whether they would be treated as owning more than one dwelling under the additional rates test.

Q. What about other SDLT reliefs?

In some circumstances, specific reliefs can be claimed to reduce (or even eliminate) any SDLT payable. Essentially, these reliefs will continue to be available to buyers otherwise falling within the additional rates.

For example, multiple dwellings relief will still be available to purchasers of more than one dwelling. Very broadly, this relief operates so that SDLT is charged on the average price for each dwelling rather than the total purchase price as a whole. The SDLT calculated on this basis will now include the additional rates if they are otherwise payable.

If you require further information on anything covered in this briefing please contact [James Bromley](mailto:james.bromley@farrer.co.uk) (james.bromley@farrer.co.uk; +44(0)203 375 7339), or your usual contact at the firm on 020 3375 7000. Further information can also be found on the [Tax](#) page on our website.

More helpfully, the draft legislation confirms that purchases of 6 or more residential properties will continue to qualify for treatment as non-residential property for SDLT purposes. Purchasers of larger residential property portfolios may therefore continue to be taxed at the non-residential SDLT rates and will fall outside the scope of the new additional rates altogether.

This publication is a general summary of the law. It should not replace legal advice tailored to your specific circumstances.
© Farrer & Co LLP,
May 2016