

# Stamp Duty Land Tax Changes - Q&A Part 2

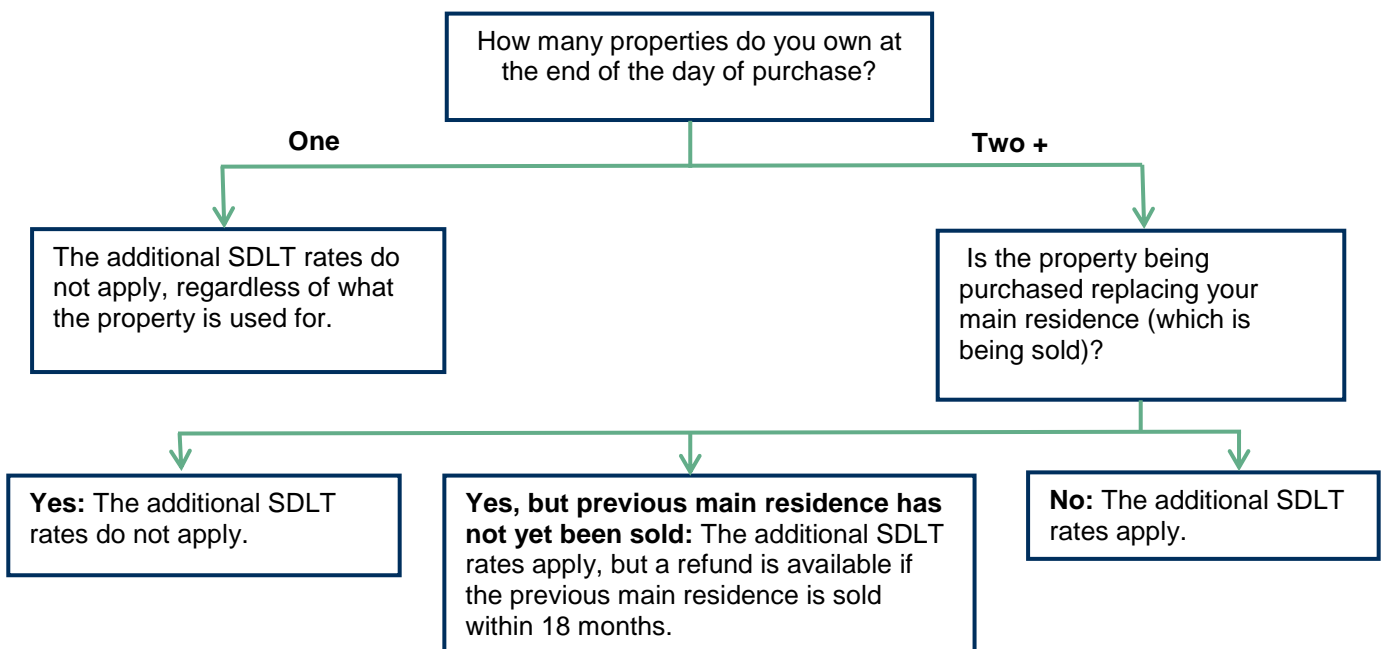
James Bromley | 4 January 2016

On 4 December 2015, we published a [Q&A](#) outlining the basics on the new higher rates of SDLT announced by the government in its Autumn Statement. The new SDLT rates are intended to apply to purchases of “additional residential properties”, such as buy-to-let and investment properties. The government has now released an open consultation on its proposal, requesting feedback and giving further information on how the new SDLT rules will work in practice when they are introduced on 1 April 2016. The additional rates themselves and the timing of when they will apply remain as set out in our previous [Q&A](#).

**Q. In what circumstances will the additional SDLT rates apply?**

A two-stage test will be introduced, to be set out in all SDLT returns for property purchases completed after 1 April 2016. Where the test is met, the new additional SDLT rates will be chargeable. Essentially, the government outlines the test as follows in its consultation:

“ The use of the property is only relevant if the purchaser will own more than one property ”



**Q. How can I tell if a property is my “main residence”?**

The government has said that this will be judged on the facts. In particular, it will not be possible to elect a property as a main residence for SDLT purposes (as it is for capital gains tax). As to what “facts” will be looked at, we expect that HMRC will consider things like the relative amounts of time spent in different properties, the correspondence addresses given to third parties, degrees of furnishings and proximity to family places of work/school.

**Q. Does it matter how I will use my new property?**

The use of the property is only relevant if the purchaser fails the first part of the new test and will own more than one property. If the purchaser owns only one property it is irrelevant whether it is a buy-to-let or investment property since the additional SDLT rates will not apply. If the purchaser will own more than one property, they will need to consider two questions about the use of their properties to determine whether they are liable to the additional rates under the second part of the two-stage test:

1. Will the new property be the purchaser’s main residence? If not, the additional SDLT rates will apply.
2. If the new property will be the purchaser’s main residence, does it also “replace” their previous main residence?

For the purposes of this second question, the new main residence must be bought within 18 months of the previous main residence being sold for it to be classed as a “replacement”. This means that if a purchaser buys a new main residence and lets out their previous main residence, the new purchase will not qualify as a “replacement” since there is no corresponding sale. However, in most cases where a main home is being replaced, the sale and purchase will either be simultaneous or the sale will precede the purchase, in which case it will be straightforward to establish that the additional SDLT rates will not apply. If the sale of the previous main residence takes place after the purchase for any reason, the government intends that the new SDLT rates will be payable on purchase but that a refund of the extra SDLT paid may be given should the sale complete within 18 months.

**Q. What if I purchase my new property jointly?**

Where a property is purchased jointly or owned by more than one person (for example, if bought by a married couple or civil partners), the government has confirmed that the two-stage test will apply to all owners. As a result, if any joint owner fails the test and owns more than property after the purchase and is not replacing their main residence, this will trigger the additional SDLT rates for all purchasers.

**Q. Are properties I own outside of England, Wales and Northern Ireland relevant?**

Yes. Even though SDLT only applies to property purchases within England, Wales and Northern Ireland, the two-stage test looks at all properties held by a purchaser worldwide. For example, if a non-UK buyer owns a property outside the UK that they

use as their main residence and they purchase a new property in London, the additional SDLT rates will apply to the London purchase. This will be the case even if the purchaser intends to use the London property as their main home in the UK, since the main residence test looks at the purchaser's global (not just UK) main residence.

#### **Q. What if I own non-residential properties?**

As expected, the tests for the additional SDLT rates are concerned only with residential properties and so any non-residential properties are not relevant. Employer-provided accommodation, timeshares, caravans, mobile homes and houseboats are all similarly disregarded.

The government has also confirmed that it does not intend to draw mixed-use properties (charged to SDLT at the non-residential rates) within the scope of the new additional rates.

#### **Q. What if a property is bought through a trust?**

The government proposes that purchases by trustees where beneficiaries have no interest in possession over the relevant property will be liable to the additional SDLT rates, but purchases by bare trustees or nominees will continue to be treated as made by their beneficial owners for SDLT purposes (meaning that the two-stage test should be applied to the beneficiaries). However, the test for the additional SDLT rates may prove difficult to apply to beneficiaries in more complex trust arrangements. The government's current suggestion is that if a beneficiary has a right to occupy the property or a right to income from it, they will be treated as owning the property when applying the tests for the additional SDLT rates. In other cases, where a beneficiary's interest in the property is more remote, the government suggests that beneficiaries will be ignored and trustees will be liable to pay the additional SDLT rates.

#### **Q. What if I already own multiple residential properties?**

The government previously announced that it would introduce a new relief from the additional SDLT rates for corporate bodies and funds making large scale investments. It was previously suggested that the relief would apply where property owners with at least 15 residential properties purchase new properties that would otherwise fall within the new additional SDLT rates.

The government is now proposing a new approach that differs from previous suggestions in two important ways. Firstly, the government has now acknowledged that it may be appropriate to extend the new relief to non-corporates and individuals. Secondly, the new relief appears to be targeted at bulk purchases of 15 or more residential properties in a single transaction. If this new approach is adopted, a property owner who already has 15 or more residential properties may not be able to claim relief from the new SDLT rates where they purchase additional properties one-by-one to add to their portfolio.

The government is consulting on the operation of the new relief, with final details yet to be confirmed.

#### Q. How will the additional rates interact with existing SDLT reliefs?

There are a number of reliefs already available from SDLT. For example, social landlords and charities are currently exempt from SDLT on particular purchases and the government has confirmed that it does not intend to charge additional SDLT on such purchases.

Importantly for larger scale investors, relief is also available from SDLT on purchases of multiple properties. In some cases, the purchase of more than one residential property qualifies for “multiple dwellings relief”, so that SDLT rates are applied to the average price of each property and not the combined purchase price (giving an overall SDLT saving). In addition, the purchase of more than 6 residential properties can qualify for SDLT at the non-residential rates, which are capped at 4% (as opposed to 12% for normal residential purchases, or even 15% under the new additional rates).

We now know that the government intends for these reliefs to continue to be available from the additional SDLT rates. So larger volume purchases may be charged SDLT based on their average price (including any additional SDLT payable under the new rules) or at the non-residential SDLT rates, subject to meeting the existing conditions for those reliefs. However, the government has not yet confirmed how the new relief for large scale investors from the additional SDLT rates (mentioned in the answer to the question above) would interact with these existing reliefs.

If you require further information on anything covered in this briefing please contact **James Bromley** ([james.bromley@farrer.co.uk](mailto:james.bromley@farrer.co.uk); 020 3375 7339), or your usual contact at the firm on 020 3375 7000.

Further information can also be found on the [Residential Property](#) page on our website.

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