

New stamp taxes surcharges



From 1 April 2016, a stamp duty land tax (SDLT) surcharge will apply to the purchase of 'additional' residential properties including buy-to-let (B2L) properties and second homes in England, Wales and Northern Ireland (rUK).

Introduction

The surcharge is aimed at supporting home ownership. It discourages both–

- the *purchase* of residential properties for use other than as a main residence and, in certain circumstances,
- the *retention* of such properties.

The Government's hope is that this will increase housing stock for home-buyers.

The economic viability of a B2L investment going forwards will need to take into account the increased SDLT cost of the purchase and from 2017, for higher-rate taxpayers, the phased restriction in mortgage relief.

To discourage B2L investors switching to Scotland, a land and buildings transaction tax (LBTT) supplement applies in a similar way to the purchase of additional residential properties there.

This paper summarises both sets of rules. The complexity of the rules in each case means that this is only a summary. Specialist advice should be sought to confirm the incidence of the surcharge or supplement on residential property purchases.

For simplicity, references to 'surcharge' are to the SDLT regime and references to 'supplement' are to the LBTT regime.

Common principles to the surcharge and supplement

Where they apply, the surcharge and supplement increase, respectively, the existing SDLT and LBTT cost of purchasing a residential property by an additional 3% of the purchase price.

The surcharge and supplement apply where–

- a person purchases a residential property,
- at the end of the day of his purchase the purchaser owns another residential property, and
- he has not replaced his previous main residence.

They are repaid if the purchased property will be the purchaser's new main residence and he sells his previous main residence within 36 months (SDLT) or 18 months (LBTT).

Purchases for less than £40,000 continue to be exempt from both taxes.

Whether a person has replaced his main residence is a question of fact. It is not open to elect which property is a main residence, as is the case for capital gains tax. The purchaser must decide for himself whether the surcharge or supplement applies. That decision may be checked by the tax authorities. Guidance is available setting out factors that Revenue Scotland will apply to determine whether a property is a main residence: click [here](#).

Table: Examples of SDLT and LBTT costs after 1 April 2016 with regard to the purchase of a single dwelling

Purchase price	SDLT cost		LBTT cost	
	Main residence	B2L	Main residence	B2L
£100,000	Nil	£3,000	Nil	£3,000
£175,000	£1,000	£6,250	£600	£5,850
£350,000	£7,500	£18,000	£8,350	£18,850
£500,000	£15,000	£30,000	£23,350	£38,350
£1 million	£43,750	£73,750	£78,350	£108,350
£2 million	£153,750	£213,750	£198,350	£258,350
£5 million	£513,750	£663,750	£558,350	£708,350

In determining whether a purchaser owns another residential property, a residential property situated anywhere in the world counts.

A person buying a B2L property will not suffer the surcharge or, it seems, the supplement if he does not own another residential property. However, having bought the B2L property he will suffer the surcharge or supplement on his first home purchase unless, before completion, he sells the B2L property. It is not enough that the B2L property is sold within 36 or 18 months of his home purchase because he will not have replaced his main residence.

A person buying a main residence will not suffer the surcharge or supplement if he does not own another residential property or, if he does, he is replacing his main residence. That the person may own multiple B2L properties does not matter. But, if, instead of selling his old main residence to buy his new main residence, he lets it out ('let to buy'), he will suffer the surcharge or supplement. It will only be refunded if he sells the property within 36 or 18 months of the purchase of his new main residence.

The test for owning another residential property does not apply in three cases. This means that every purchase of a residential property (including the first purchase of a residential property) by three types of purchaser will attract the surcharge or supplement.

- **Companies** – subject, in the case of LBTT only, to buying six or more residential properties in one go.
- **Individuals as property-investors or property-traders in Scotland** – but Revenue Scotland accept that a property-investment business only starts after a property is purchased. So the effect of this rule is unclear.
- **Trustees of settlements** – unless beneficiaries are entitled to occupy the property for life or to the income earned in respect of the property and hold no other residential property interests. This is because where a beneficiary has such a life interest *he* is treated as owning the property. So the surcharge and supplement will apply if the beneficiary owns another residential property at the end of the day of the purchase unless he is replacing his main residence.

Table: Comparison of SDLT and LBTT costs of the purchase of a single mixed use property where 20% of the price is attributable to the commercial use and 80% is attributable to residential use:

Purchase price	SDLT cost	LBTT cost	% higher if Scottish purchase
£100,000	Nil	£2,400	N/A
£175,000	£500	£4,950	890%
£350,000	£7,000	£14,400	106%
£500,000	£14,500	£24,750	71%
£1 million	£39,500	£59,250	50%
£2 million	£89,500	£128,250	43%
£5 million	£239,500	£335,250	40%

Special rules

Other special rules apply. The two regimes differ in their approach to some of these situations. They include–

Joint purchases: Where two or more individuals purchase a residential property jointly, they are treated as one buyer for the purposes of the surcharge and supplement. So the ownership of another residential property by any of them *to any extent* would mean that the surcharge or supplement applies in full.

Married couples, civil partners and co-habitees: Co-habiting married couples and civil partners are also treated as one buyer for the purposes of the surcharge and supplement; and, controversially, unmarried co-habitees are treated as one buyer for the purposes of the supplement. So like joint purchasers the ownership of another residential property by any of them to any extent would mean that the surcharge or supplement applies in full.

Purchase of multiple residential properties: The purchase of two or more residential properties continues to benefit from a partial rule under both taxes, multiple dwellings relief (MDR). That relief generally sets the tax by reference to the average price per dwelling. That calculation will be increased by the surcharge or supplement where they apply. The purchase of six or more residential properties in a single transaction will not attract the surcharge or supplement. In both cases, the transaction will be taxed as if it were a commercial property transaction unless a claim for MDR is made.

Purchase of mixed-use property: The purchase of a residential property and a non-residential property in a single transaction or an interest in a building that is used for residential and non-residential purposes will not attract the surcharge but *will* attract the supplement on the proportion of the price attributable to the residential property. The difference in tax treatment between purchases of residential property and purchases of mixed-use property in rUK (ie, under SDLT) is remarkable. So too is the difference in tax treatment between purchases of mixed-use property in rUK (ie, under SDLT) on the one hand and purchases of the same property in Scotland (ie, under LBTT) on the other. The table on the next page illustrates this.

Table: comparison of SDLT costs of the purchase of a single mixed-use property and a residential property:

Purchase price	SDLT cost (residential)	SDLT cost (mixed use)	% lower if mixed-use purchase
£100,000	£3,000	Nil	N/A
£175,000	£6,250	£500	1,150%
£350,000	£18,000	£7,000	157%
£500,000	£30,000	£14,500	107%
£1 million	£73,750	£39,500	87%
£2 million	£213,450	£89,500	138%
£5 million	£663,750	£239,500	177%

Controversy

The surcharge and supplement apply in situations that are not obvious. Below are some examples:

Purchase of a first home: Mr A's mother dies. He inherits her home. He decides to let it out for rental income and borrow against the property. He later wishes to buy his first home and use his share of the borrowing to help fund his purchase. But because he already owns a residential property and is not replacing his main residence, he must pay the surcharge/supplement.

Purchase of a first matrimonial home: Miss B is a single young professional. She buys a one-bed apartment funded by a five-year fixed term mortgage. A year later she falls in love with Mr C and he moves in with her. They start a family and they wish to buy a new home together. Miss B cannot sell her one-bed apartment for the remainder of her fixed term without incurring a significant redemption penalty. They would have to pay the surcharge in full if they buy jointly (regardless of her share). Were they buying a home in Scotland, Mr C would have to pay the supplement even if they do not buy jointly. He is deemed to own Miss B's apartment by virtue of co-habiting with her.

Relocation due to work: Mrs E is employed and owns a home with her husband. She is required to work overseas indefinitely. She buys a new home abroad with her husband. They let out their UK home for rental income. Later, Mrs E is made redundant. She and her husband return to the UK. They retain their overseas property, sell their UK home and purchase a new home. They must pay the surcharge or supplement because they own another residential property (abroad) and are not replacing their main residence.

Parents buying for children: Mr and Mrs F own their home. Their disabled child (G) lives with them. They decide to help G financially by giving him cash to fund the deposit on the purchase of his first home; G funds the rest using a mortgage. The bank requires Mr and Mrs F to act as guarantors and own a nominal share of the property legally. G is deemed to own his parents' family home, so must pay the surcharge or supplement on buying his first home.

Businesses: X Limited buys five dwellings for private rental. It must pay the surcharge.

Chain breaks: Mr and Mr H own their own home. They wish to downsize and buy a smaller home. The sale of their old home collapses and they take out an emergency bridging loan to complete the purchase of their new home. As Mr and Mr H own two residential properties at the end of the day of completion, they must pay the surcharge or supplement. The cost is only partly met by retaining the deposit of the seller on their failed sale of their old home. They would only be entitled to recover the surcharge or supplement if they sell their old home within 36 or 18 months, as applicable.

Future changes

The surcharge will be passed by regulations. Those regulations have temporary effect. To have permanent effect, the surcharge must be passed by an Act, the Finance Act 2016. The surcharge rules may change as the Finance Bill 2016 is examined in Parliament. The Finance Act 2016 is likely to be passed in July this year. In contrast, the supplement has been passed by statute, the Land and Buildings Transaction Tax (LBTT) (Amendment) (Scotland) Act 2016. Changes to it can be made by regulations. However, such changes are not anticipated for the foreseeable future.

The surcharge rules can be found [here](#). The supplement rules can be found [here](#).

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