



# Consultation on Proposal for Higher Rates of SDLT on Purchases of Additional Residential Properties

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# Consultation on Proposal for Higher Rates of SDLT on Purchases of Additional Residential Properties

On 28<sup>th</sup> December 2015 the government published a consultation document on the proposal, previously announced by the Chancellor in the Autumn Statement on 25<sup>th</sup> November 2015, to charge higher rates of SDLT on purchases of additional residential properties. The consultation document is available at: [www.gov.uk/government/consultations/consultation-on-higher-rates-of-stamp-duty-land-tax-sdl-t-on-purchases-of-additional-residential-properties](http://www.gov.uk/government/consultations/consultation-on-higher-rates-of-stamp-duty-land-tax-sdl-t-on-purchases-of-additional-residential-properties).

The document confirms that the higher rates will be 3% above the current SDLT rates which apply to residential property and will take effect from 1<sup>st</sup> April 2016. ([However, the transitional rules which are to apply in respect of contracts which are exchanged before 1<sup>st</sup> April 2016 and which are completed on or after that date were detailed in our previous note, which can be viewed here](#)).

The document contains a reasonable amount of detail and over 40 examples. However, there is no or insufficient detail on some aspects, such as the transactions which are to benefit from a relief from the additional rate. We would summarise the government's policy on the proposed higher rates as follows:

- Purchases of residential properties by individuals will be subject to the additional rate unless, at the end of the day of the transaction, the individual owns only one residential property. This is to be subject to the exception mentioned below. Where, at the end of the day of the day of the transaction, the individual owns only one residential property the additional rate will not apply regardless of the use to which the property is put, so for example it will make no

difference whether the property is to be used as the individual's residence or as a buy to let investment property.

- The sole exception to the above will apply where the property which is being purchased is replacing the individual's main residence. In such a case, for example where the individual owns two or more residential properties but is selling one of the properties which he has used as his main residence and replaces it by buying another property which is to be used as his main residence, the additional rate will not apply.
- However, if the sale of the main residence has not been completed at the time of completion of the purchase of the new main residence, the additional rate will apply, but a refund of the additional rate can be claimed if the property previously used as the main residence is sold within 18 months.
- The additional rate will apply in cases where two or more individuals purchase a residential property jointly if any one of the joint purchasers own another

residential property (unless that property is a main residence which is being replaced).

- Married couples and civil partnerships will count as a "single unit". So, if a husband and wife, or either of them, are purchasing a residential property, the additional rate will apply if both or either of them already own a residential property.
- Residential properties which are owned by the purchaser anywhere in the world will be taken into account. So, if the purchaser already owns a residential property in, say, Scotland (properties in Scotland being subject to land and buildings transactions tax and not SDLT) or anywhere outside the UK, the purchase of a residential property in England, Wales or Northern Ireland will be subject to the additional rate.
- Where the purchaser already owns a residential property and is purchasing an additional residential property it will be crucial to establish whether the property which is being acquired is to replace the individual's "main residence". This will be a question of fact and (unlike for CGT) will not be capable of being determined by an election.
- According to the consultation document the existing rules which determine whether a property is "residential" will continue to apply. So:
  - commercial property (such as shops or offices), agricultural land and bare land, even where that land may subsequently be used for residential purposes, will be non residential and the non residential SDLT rates will apply;
  - a mixed use property, ie one with both residential and non residential elements, will continue to be subject to the non residential rates;
  - six or more residential properties acquired in a single transaction will be non-residential property to which the non residential rates will apply (unless multiple dwellings relief is claimed);
- Multiple dwellings relief will continue to apply where two or more residential properties are being acquired;
- Companies and collective investment schemes will be subject to the additional rate even on the purchase of the first residential property by such entities. However, the government is considering introducing exemptions, for example on the bulk purchase of at least 15 residential properties. It is possible that these exemptions may apply to purchases by individuals.

## About the Author



### Marc Selby

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Marc is head of Corporate Tax since his arrival in 1998. Marc is a member of:

- The Chartered Institute of Taxation, and sits on the Institute's Property Taxes Sub-Committee and is the Technical Officer, Indirect Taxes of the Institute's Harrow and North London Branch
- The VAT Practitioners Group.
- The Stamp Taxes Practitioners Group, of which he is a founder and Council member.
- Marc regularly contributes articles to professional journals, particularly on VAT and stamp taxes.

He also has a busy consultancy practice, in which he advises other professionals, including lawyers and accountants, on the tax aspects of corporate and property transactions.

# Our Corporate Tax Offering

Laytons' Tax Group includes Chartered Tax Advisers and covers the full range of direct and indirect taxes. We regularly work with colleagues in other practice areas, particularly corporate, real estate, private client, intellectual property and employment, to provide practical and commercial solutions. We are also experienced in working with the client's own advisers, often other professionals who may be solicitors or accountants, in providing technical tax support on transactions and structures on which they are advising.

We recognise that the tax planning environment has changed radically over recent years and that there is now far greater statutory regulation and control over perceived, as well as actual, tax avoidance. Tax advisers must now understand and advise on increasingly complex anti avoidance rules, including the new rules which allow the UK tax authority to demand up front payment of disputed tax where they are challenging a scheme. We strive to achieve what is practical and possible and draw attention to the real risks.

A significant part of our practice includes assisting other professionals, including solicitors and accountants, on a consultancy basis on the tax aspects of transactions on which they are advising.

We have broad experience of cross-border transactions and expertise in direct and indirect tax matters.

## Experience

We advise across a wide spectrum reflecting the breadth of Laytons' firm-wide practice.

We regularly advise on:

- Corporate transactions and structures including mergers and acquisitions, de-mergers, reconstructions, private equity transactions and joint ventures
- Property transactions and structures including stamp duty land tax, annual tax on enveloped dwellings, VAT and capital allowances
- Remuneration and benefits – employee share and share option schemes, employee benefit trusts, remuneration planning and taxation of expatriate employees (inbound and outbound)
- Cross border – inbound and outbound

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