



SDLT Surcharge

Expiry of the transitional period on
26 November 2018

This article was first published just before 25 November 2017 which marked the second anniversary of the 2015 Autumn Statement in which the Government announced that “higher rates of stamp duty land tax” would apply to purchases of “additional residential properties” starting on 1 April 2016. HMRC refer to it as HRAD, it is commonly called the 3% surcharge. It has caused all sorts of complications and Blake Morgan have helped many people understand how it applies to their transactions.

There are transitional provisions for purchases in England completing by 26 November 2018. (For purchases in Wales see below.) Buyers in some situations needed to complete their purchase by 26 November 2018 if they were to escape the 3% surcharge. Although we are now past the 26 November 2018 deadline, this piece has been left on line in case it is of assistance. There are likely to be quite a few people who completed a purchase by 26 November 2018 and paid the 3% extra when they should not have done so. They might be able to reclaim the extra 3% paid.

The transitional rules could benefit people buying a property to live in as their only or main residence and who had other property interests “counting against them”. More specifically they affect those who had previously sold (or at least disposed of their major interest in) another property which they used to live in but:

- Their sale or disposal was before 26 November 2015 or
- They last lived in the property as their only or main residence before 26 November 2015.

Such people would need to complete their purchase by 26 November 2018 or face the 3% stamp duty land tax (SDLT) surcharge.

John Shallcross, Blake Morgan's stamp duty land tax specialist, provides some examples of those buyers affected by the ending of the transitional period on 26 November 2018.

1. THE SALE OF A PROPERTY BEFORE 26 NOVEMBER 2015 THAT YOU ONCE LIVED IN

Alan and Betty last lived in England in 2015. They sold their home, completing in January 2015 and moved to work abroad living in accommodation provided by their employers. They own a holiday home abroad worth about £130,000. They are now returning and plan to buy a house in England for £250,000 which they will move into straight away.

- If Alan and Betty complete the purchase by 26 November 2018 the 3% surcharge will not apply to the purchase and the SDLT would be £2,500.
- If they complete after 26 November 2018, but retain the holiday home, then the 3% surcharge will apply to the purchase and the SDLT will be £10,000.

Analysis:

Holiday homes usually count as “dwellings” as normally they are suitable for someone to live in as a home, even if in fact they are only used for holidays. In considering whether a property “counts against” someone for 3% stamp duty land tax purposes one looks at properties anywhere in the world. The shares Alan and Betty have in the holiday home are worth more than £40,000 each, so this property counts against each of them.

If Alan and Betty buy the £250,000 property after 26 November 2018 it will be more than three years after they sold their home in January 2015. This means they would not be able to use the sale to bring them within the exception from the surcharge for the replacement of an only or main residence (referred to as the replacement exception).

If they complete the purchase of the £250,000 property by 26 November 2018 then (because this is a case where the sale is before the purchase) the three year rules do not apply so the replacement exception would apply. All of the requirements for the replacement exception are met for each of Alan and Betty. These requirements can be summarised for a case where completion is by 26 November 2018 as follows:

- *On completion of the purchase of the new home the buyer intends to live in the new home as the buyer's only or main residence.*
- *In a transaction on the same date or earlier than the purchase of the new home the buyer (or the buyer's spouse or civil partner at the time) disposed of a major interest in another dwelling ("the sold dwelling").*
- *Immediately after that disposal neither the buyer nor the buyer's spouse or civil partner retained a major interest in the sold dwelling (this was introduced by 2017 Autumn Budget for purchases completing on or after 22 November 2017).*
- *At any time before completion of the purchase of the new home, the buyer lived in the "sold dwelling" as the buyer's only or main residence.*
- *At no time on or after the disposal of the "sold dwelling" has the buyer (or the buyer's spouse or civil partner) acquired a major interest in any other dwelling with the intention of living in it as the buyer's only or main residence.*

2. THE SALE OF A PROPERTY YOU LAST LIVED IN BEFORE 26 NOVEMBER 2015

Charlie and Delia jointly bought a flat in April 2002 and lived in it until May 2006 when they bought a town house which they moved into. They didn't sell the flat; they rented it out to tenants instead.

Now Charlie and Delia are buying a country cottage to live in, at a cost of £500,000. But to fund the purchase, they will first need to sell the flat. They will keep the town house which is worth £200,000; Delia's mother will live in it free of rent.

- If they complete the purchase by 26 November 2018 they will escape the 3% surcharge on the cottage and the SDLT would be £15,000.
- If they complete the cottage purchase after 26 November 2018 the surcharge will apply to the cottage and the SDLT will cost £30,000.

Analysis:

Charlie and Delia once lived in the flat as their only residence. But because they last lived in the flat more than three years ago, for the replacement exception to apply to the purchase, they need to complete the purchase of the cottage by 26 November 2018. This is the case even though they are only now selling the flat.

Under the transitional provisions they could take advantage of the replacement exception, but once the three year rules are in effect for completions after 26 November 2018 Charlie and Delia would fail to meet the test that they lived in the flat as their only or main dwelling at some time in the three years before the purchase of the cottage. Once the transitional period is over the requirements of the replacement exception can be summarised as follows:

- *On completion of the purchase of the new home the buyer intends to live in the new home as the buyer's only or main residence.*
- *In a transaction which completed within the three years before the purchase of the new home the buyer (or the buyer's spouse or civil partner at the time) disposed of a major interest in another dwelling ("the sold dwelling").*
- *Immediately after that disposal neither the buyer nor the buyer's spouse or civil partner retained a major interest in the sold dwelling (this was introduced by 2017 Autumn Budget for purchases completing on or after 22 November 2017).*

- *At any time during that same period of three years the buyer lived in the "sold dwelling" as the buyer's only or main residence.*
- *At no time on or after the disposal of the "sold dwelling" has the buyer (or the buyer's spouse or civil partner) acquired a major interest in any other dwelling with the intention of living in it as the buyer's only or main residence.*

3. THE TRANSFER OF A SHARE IN A PROPERTY BEFORE 26 NOVEMBER 2015

Ella and Fred were married and jointly owned two properties: the home they lived in and a flat they rented out, but which is in negative equity.

When Ella and Fred divorced in June 2014, Ella transferred her entire half share in the matrimonial home to Fred. They jointly retain the flat in negative equity which is worth around £100,000 and is owned in equal shares.

Ella has lived in rented accommodation since June 2014 but is now able to buy her own house to live in for £130,000.

- If Ella completes the purchase of the £130,000 house by 26 November 2018 she will escape the surcharge and the SDLT would be £100.
- If she completes after 26 November 2018 the 3% surcharge will apply and the SDLT would be £4,000.

Analysis:

Ella's half share in the flat in negative equity will count against her for the purposes of her new house purchase. The half share is worth over £40,000. The legislation requires us to look at the value without taking off the amount of the mortgage debt.

Ella lived in the matrimonial home as her only residence but the disposal of her share was more than three years ago.

She therefore needs to complete the purchase of the new house by 26 November 2018 to fall within the replacement exception. Once the transitional provisions fall away she would be caught out by the three year tests.

Note: For purchases completing on or after 22 November 2017 it is important (as in the facts of the example) that Ella transferred her entire share in the former matrimonial home. Though the same set of changes brought in by the Autumn Budget with effect from 22 November 2017 also provide a "disregard" in some cases of property interests held pursuant to a "property adjustment order".

4. THE TRANSFER OF A SHARE IN A PROPERTY YOU LAST LIVED IN BEFORE 26 NOVEMBER 2015

Gerald and Hattie are brother and sister and bought Property 1 together in 2003 and both lived there. In 2006, Gerald moved out and bought Property 2 to live in. He kept his share in Property 1, Hattie continued to live there. Property 2 is now worth £100,000.

Gerald is now buying Property 3 for £150,000 but to fund the purchase he will sell his half share in Property 1 to Hattie. Gerald will retain Property 2 and plans to rent it out. Gerald will live in Property 3 as his only residence.

- If Gerald can complete the purchase of Property 3 by 26 November 2018 the purchase escapes the 3% surcharge and the SDLT is £500.
- If Gerald completes after 26 November 2018 the 3% surcharge will apply and the SDLT is £5,000.

Analysis:

Although Gerald lived in Property 2 since moving out of Property 1, he can still potentially use his disposal of all of his interest in Property 1 to get within the replacement exception for the purchase of Property 3.

However, because Gerald last lived in Property 1 more than three years ago, he must complete the purchase of Property 3 by 26 November 2018 in order to escape the 3% surcharge. Once the transitional provisions fall away he would be caught out by one of the three year tests. He would be caught out by the one requiring that he had lived in Property 1 at some point within the three years leading up to the purchase of Property 3 in order to come within the replacement exception.

Note: For purchases completing on or after 22 November 2017 it is important that Gerald disposes of his entire share in Property 1. This is because of changes made by the 2017 Autumn Budget.

5. THE SALE BEFORE 26 NOVEMBER 2015 BY A SPOUSE OF A PROPERTY YOU USED TO LIVE IN

John and Katie are a long-married couple. They both lived in Property 1 (owned solely by John) and sold it in July 2014. They then moved into Property 2, which Katie had inherited from her parents many years before.

John and Katie are now buying a farmhouse to live in for £1m. But Katie is retaining Property 2 which she will rent out.

- If John and Katie complete the purchase of the farmhouse by 26 November 2018 the purchase escapes the surcharge and the SDLT is £43,750.
- If they complete after 26 November 2018 the 3% surcharge will apply and the SDLT will be £73,750.

Analysis:

The legislation requires us to look at joint buyers separately for the purpose of the stamp duty land tax surcharge, even if they are married. There are references in the shorter online guidance to treating married couples as a single unit, but this oversimplifies matters and is often not a helpful way of understanding the application of the rules. [This is discussed further in a piece on guidance produced by HMRC in March 2017.](#)

So we need to look at John and Katie separately. We need to see whether the surcharge would have applied looking at the circumstances of either of them alone. If the surcharge would have been due for either of them, then the surcharge will be due for the whole transaction.

The analysis for John is simple. He has no properties counting against him. On the day of completion of the purchase of the farmhouse that will be the only property he has an interest in.

Katie owns Property 2, so that counts against her. However, Katie can potentially rely on John's sale of Property 1 because she used to live in Property 1 as her only residence and she was John's spouse at the time of the sale.

But because John's sale of Property 1 was over three years ago, for the replacement exception to apply to Katie, the purchase of Property 3 needs to complete by 26 November 2018.

Wales

For purchases in Wales completing on or after 1 April 2018, stamp duty land tax is replaced by "Land Transaction Tax". This also has a 3% surcharge, though the rules are markedly different. Transitional provisions passed on 30 January 2018 bring in the same date for Land Transaction Tax.

CONCLUSION

The factors that all five scenarios above have in common are:

- (a) There was a disposal (like a sale or transfer) of a previous home before the purchase of a new property which the buyer intends to live in as their only or main residence.
- (b) The buyer (or sometimes a spouse/civil partner) had either made that disposal or had last lived in the previous home before 26 November 2015.
- (c) The buyer owns or has a share in another residential property which counts against him or her.

It seems likely that people will be needing advice on the complexities of the 3% surcharge for some time to come. The rules were commonly misunderstood and it is thought that quite a few people paid the extra 3% when it was not due. They could now apply for a refund.

FOR PROFESSIONAL ADVICE

Please contact Blake Morgan's SDLT specialist, John Shallcross at john.shallcross@blakemorgan.co.uk or 023 8085 7469.

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21 November 2017. Updated November 2018.



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