



Stamp Duty Land Tax 3% surcharge

Review of entry level guidance

on [.gov.uk](https://www.gov.uk) website

29 January 2020

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Appendix: Text of .gov.uk guidance with John Shallcross' suggestions ahead of meeting on 31 January 2020.

1 SUMMARY

HMRC are reviewing the stamp duty land tax higher rates [guidance on the .gov.uk pages](#) and have asked for comments on how it can be improved. I have suggested areas which need to be corrected; the full text is set out in the Appendix to this note.

If you require professional advice on SDLT, please contact John Shallcross at Blake Morgan at john.shallcross@blakemorgan.co.uk or 023 8085 7469.

2 BACKGROUND

The higher rates of stamp duty land tax for additional properties (involving a 3% surcharge) came into effect on 1 April 2016.

Originally there was some detailed information in a Guidance Note running to 29 pages which was updated and then (mostly) moved to the Manual starting on page [SDLTM09730](#) on 20 March 2018.

At the same time there has been some introductory guidance on the .gov.uk website (occasionally misleadingly referred to as "detailed guidance"). It was first put on line on 16 March 2016 and has been amended a number of times since, with a major re-write released on 24 March 2017 and minor changes since, the last being on 30 January 2019.

3 REVIEW

Members of the Stamp Taxes Working Together Steering Group were asked to comment on the .gov.uk guidance to identify errors and suggest how it could be improved.

My contribution to this is in the Appendix. It sets out the existing wording of the guidance, with my comments being in footnotes and in a few cases by tracked changes. I have been told by someone in the HMRC team that they hope to be able to make the majority of the changes I have suggested.

The main areas I have picked up on are summarised below.

4 REPLACEMENT EXCEPTION, DOES NOT NEED TO BE THE PREVIOUS MAIN RESIDENCE DISPOSED OF

In order to escape the surcharge by virtue of "replacing an only or main residence" it is not always the case that it must be last home of the person which has to be disposed of (although it usually will be). The existing .gov.uk guidance continues to lead people astray on this point, despite the conditions being set out well in [SDLTM09800](#). I go into it in [my Case Study](#) and often come across people misled by the error in the guidance here.

This point is dealt with in footnotes 5, 11 and 19 in the text set out in the Appendix.

5 CONDITIONS TO BE MET FOR A RIGHT TO A REFUND TO ARISE

If someone keeps an old home when they buy a new one often the 3% extra SDLT will be due on the purchase, but the buyer might be entitled to a refund if the old home is sold within the next three years. The .gov.uk guidance does not mention the requirement for a refund that the buyer had lived in the old

home as their only or main residence at some time during the three year period leading up to the purchase of the new home.

This problem is compounded by the page for applying for a refund also not mentioning this condition. I am told that HMRC are working on that page and the reclaim form SDL16 to improve it.

I make this point in footnote 18 in the Appendix.

6 PEOPLE STILL THINK THE EXTRA 3% CANNOT APPLY IF THEY ARE BUYING A HOME TO LIVE IN!

Although the 3% surcharge is often described as being due on second homes and buy to lets, it can apply to the purchase of a home for the buyer to live in. This is most often when the buyer (or a spouse / civil partner) retains ownership of a previous home.

This is dealt with in the Appendix in some tracked text and at footnote 7.

7 TIME LIMIT TO SUBMIT A RETURN

The time limit to submit a land transaction return was reduced from 30 days to 14 days with effect from 1 March 2019.

This is dealt with in footnote 17.

Written 29 January 2020

This article is intended for general information purposes only and does not constitute legal or professional advice. Most of the examples are not covered by HMRC guidance and the official view of HMRC on the correct analysis is not known. Advice should be sought before proceeding with any transaction.

APPENDIX COMMENTS IN GUIDANCE

<https://www.gov.uk/guidance/stamp-duty-land-tax-buying-an-additional-residential-property>

Text from website above with comments in tracking by John Shallcross for 31 January 2020 Working Together Steering Group meeting

Guidance

Higher rates of Stamp Duty Land Tax

Check if you have to pay the higher rates¹ of Stamp Duty Land Tax (SDLT) when you buy a residential property in England or Northern Ireland.

Published 16 March 2016

Last updated 30 January 2019² — [see all updates](#)

¹ If we have the promised 3% surcharge for properties acquired by non-UK residents then it will need to be made clearer which surcharge this guidance addresses.

From: [HM Revenue & Customs](#)

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You must pay the higher SDLT rates when you buy a residential property³ (or a part⁴ of one) for £40,000 or more, if all the following apply:

- it will not be the only residential property worth £40,000 or more that you own (or part own) anywhere in the world
- you have not sold or given away [\[your previous\]](#)⁵ main home
- no one else has a lease on it which has more than 21 years left to run⁶

Find out about the higher rates for [trusts](#), [companies](#) and [partnerships](#).

There are certain circumstances [when the higher rates do not apply](#).

More information about [Scottish](#) or [Welsh](#) transactions is available on GOV.UK.

Who the higher rates apply to

You may have to pay the higher rates even if you intend to live in the property you're buying (and regardless of whether or not you already own a residential property).

² This is so much better than the Manual pages which claim to be updated recently although many are well out of date.

³ It is perhaps too much to expect, in this entry level guidance, for the nuances of the differences between "residential property" and "dwellings" to be explained. Take as an example some garden land bought alone. But a link to the relevant Manual guidance, including the example about garden land at SDLTM09740 would be helpful.

⁴ This would better say "a share in one".

⁵ This wording incorrectly suggests that it is the previous main home ("residence") which must be disposed of. This is not correct; it needs to be a property that was lived in as an only or main residence, but not necessarily the immediately previous one. This loose wording can lead taxpayers, advisers and even HMRC staff astray. See the experience in the Case Study here: <https://www.blakemorgan.co.uk/stamp-duty-land-tax-3-surcharge-case-study-on-replacement-of-only-or-main-residence/> where HMRC eventually conceded they had got it wrong and had paid legal costs and compensation. There is a similar issue on wording in two places below where a similar footnote appears.

⁶ A link to the more detailed guidance on Condition B in SDLTM09775 would be useful here as the wording glosses over some issues.

This is because the rules do not apply only to you (the buyer), but also to anyone you're married to or buying with. Or the higher rates might apply to a property you intend to live in as your "residence" because of another property you own or are treated as owning⁷.

If you're married or in a civil partnership

The rules apply to you both as if you were buying the property together, even if you're not.

If either of you individually have to pay the higher rates, you must pay the higher rates for the transaction as a whole (unless you're permanently separated).

Buying with someone else

The rules apply to each person (and their spouse) who is buying the property.

If any of you individually have to pay the higher rates, you must pay the higher rates for the transaction as a whole.

If you're buying as a trustee

The rules may apply to the beneficiary of the trust and not to you, depending on the [type of trust](#) it is.

What property the higher rates apply to

When you know who the rules apply to, you should work out how many residential properties each of you will own at the end of the day of your new purchase.

If any of you will own, or part own more than one residential property worth £40,000 or more, you will have to pay the higher rates on your new purchase (unless there is another reason why the higher rates do not apply).

Include any residential property that:

- is owned on behalf of children under the age of 18 (parents⁸ are treated as the owners even
 - if the property is held through a trust and they are not the trustees)
- you have an interest in as the beneficiary of a trust⁹

Include your current home, if you still own it at the end of the day you buy your new home.

The higher rates

Purchase price	Rate
up to £125,000	3%

⁷ Experience shows that this needs emphasising; people still will not accept that the 3% extra can apply to them if they intend to live in the property they are buying.

⁸ It is not just parents, but spouses and civil partners living with parents who are treated in this way. Yes, too much complexity for entry level guidance, but a link should be provided to more detailed guidance in the Manual at SDLTM09815.

⁹ This is far too crude. A link to the guidance on trusts at SDLTM09815 and SDLTM09835 would be better.

Purchase price	Rate
over £125,000 to £250,000	5%
over £250,000 to £925,000	8%
over £925,000 to £1.5 million	13%
over £1.5 million	15%

You will pay the higher rates on everything you give for the purchase, this is called [the 'consideration'](#).

When the higher rates do not apply

The higher rates do not apply to certain people, property and transactions.

People

Do not include anyone who will both:

- use your new property as their¹⁰ main home
- have sold or given away [the last main home they owned]¹¹ before you buy your new home (or on the same day)

Property

Do not include¹² property (or part¹³ of a property) if any of the following apply:

- the property is worth less than £40,000
- it's a mixture of residential and non-residential (like a shop with a flat above it)
- it's 'moveable' like a caravan, houseboat or mobile home (unless it has become a permanent fixture)

The rules also do not apply to property you lease¹⁴ if either:

- your lease is for 7 years or less (on the date it was granted)
- the lease is owned by someone else and it has more than 21 years left

¹⁰ The mixture of "your" and "their" is odd here, but is a consequence of using the "you" format.

¹¹ This wording incorrectly suggests that it is the last main home ("residence") which they owned which must be disposed of. This is not correct; it needs to be a property that was lived in as an only or main residence, but not necessarily the immediately previous one. This loose wording can lead taxpayers, advisers and even HMRC staff astray. See the experience in the Case Study here: <https://www.blakemorgan.co.uk/stamp-duty-land-tax-3-surcharge-case-study-on-replacement-of-only-or-main-residence/> where HMRC eventually conceded they had got it wrong and had paid legal costs and compensation. There is a similar issue on some wording above and below where a similar footnote appears.

¹² This is ambiguous as to whether it refers to the property being acquired or other property held (Condition C). The middle bullet point is different to the other two in that it is only true as to property being bought.

¹³ This would read better as referring to a share in a property.

¹⁴ This is mixing up rules as to what is a "major interest" for these purposes and issues with properties being "subject to a lease". Whilst these issues would be too technical to go into detail in this entry level guidance it would be sensible to provide links to where there is more detailed guidance, for example at SDLTM09775 for the property bought.

Transactions

If you're transferring ownership (or part ownership) of a residential property to your spouse, the higher rates do not apply as long as no one else is involved in the transfer¹⁵.

If you want to increase the amount of a property that you already own, you do not have to pay the higher rates when all the following apply:

- you already own 25% or more
- the dwelling has been your only or main home for the previous 3 years
- (if you're extending a lease) your lease still has 21 years or more left to run

Reliefs you may qualify for

You may qualify for a 'relief' that reduces the amount of SDLT you have to pay, for example multiple dwellings relief.

Check what [reliefs are available](#).

If you're buying 6 or more properties¹⁶, you can choose to pay either the:

- non-residential rates of SDLT (not the higher rates)
- higher rates using multiple dwellings relief

What you need to do

Send your return

Your [SDLT return](#) must be sent to HMRC within 30 days¹⁷ of the 'effective date' of the purchase.

Pay your bill

You can [pay your SDLT bill](#) as soon as your return has been sent to HMRC.

When and how to get a refund

If you sell or give away your previous main home within 3 years of buying your new home you can [apply for a refund](#) of the higher SDLT rate part of your Stamp Duty bill¹⁸.

You cannot get a refund if:

¹⁵ This would be a good place for a link to the more detailed guidance at SDLTM09820. In particular there is a requirement that the spouses / civil partners are living together. People might get this confused with issues of the complete relief available on marriage dissolution.

¹⁶ In a single transaction. Provide a link here more detailed guidance. The issues are set out in the minutes of a meeting here: <https://www.tax.org.uk/policy-technical/technical-news/sdlr-residential-definitions-finance-act-2003-section-116-meaning->

¹⁷ This should have been updated to say 14 days with effect from 1 March 2019.

¹⁸ This is very poor! What about the condition of having lived in the old home within the three years leading up to the purchase of the new home? Bizarrely the .gov.uk pages about the refund application do not cover this point either!! There is better guidance at SDLTM09800, SDLTM09805 and SDLTM09809.

- you or your spouse still own any part of your previous¹⁹ home
- the higher rates still apply to you for another reason

Properties sold on or before 28 October 2018

If you sold your previous main residence on 28 October 2018 or earlier²⁰, a refund must be claimed within either:

- 3 months of the sale of the previous main residence
- 12 months of the filing date of the SDLT return relating to the new residence, whichever comes later

Properties sold on or after 29 October 2018

If you sold your previous main residence on 29 October 2018 or later, a refund must be claimed within 12 months of either the:

- sale of the previous main residence
- filing date of the SDLT return relating to the new residence, whichever comes later

Trusts, companies and partnerships

Trusts

If you're a trustee buying on behalf of a bare trust, the beneficiary of the trust will be treated as the buyer.

The beneficiary will also be treated as the buyer if a trust holds property and the beneficiary is entitled²¹ to any of the following:

- occupy the property for life
- receive income from the property

If the beneficiary is under 18, the child's parents are treated as the buyers (even if they are not the trustees) unless the child is covered by the Mental Capacity Act 2005 or the Mental Capacity Act (Northern Ireland) 2016²².

You (the trustee) will be treated as the buyer if it either:

- is not a bare trust
- does not give the beneficiary a right to occupy a property for life or receive income from it

¹⁹ This wording again incorrectly suggests that it is the last main home ("residence") which they owned which must be disposed of. This is not correct; it needs to be a property that was lived in as an only or main residence, but not necessarily the immediately previous one.

²⁰ I suggest this wording stay up as there are surprising number of people who sold their old home on or before 28 October 2018 and who missed the time limit for applying for a refund.

²¹ Entitled under the trust. Perhaps provide a link here to the fuller guidance at SDLTM09835.

²² I suggest providing a link to the more detailed guidance at SDLTM09815 would be good here.

If a trustee buys a property but none of the above apply (for example it's a discretionary trust), the purchase is treated as if it were made by a company rather than an individual.

Companies

Companies must pay the higher rates for any residential property they buy if:

- the property is £40,000 or more
- the interest they buy is not subject to a lease which has more than 21 years left

If the property costs more than £500,000, the [15% higher threshold SDLT rate for corporate bodies](#) may apply instead.

Partnerships²³

You have to pay the higher rates if your partnership already owns a residential property and you purchase another residential property for your partnership.

If you're a partner but are buying on your own behalf, the rules do not apply to the other partners unless they are your spouse.

You will not have to pay the higher rates if you buy a property for yourself and your only additional properties are used for your partnership's trade.

More information

More detailed information is available in HMRC's Stamp Duty Land Tax manual about:

- what is a ['dwelling'](#)²⁴
- when [2 or more properties count as one](#)
- what is a [main residence](#)
- what ['disposing of your main residence'](#) means
- if you're [divorced or permanently separated](#)
- buying [more than one property](#)
- if you have [no beneficial ownership in a property](#)
- [inherited](#) property

Agents can also catch up with the [latest available webinar on the higher rates of Stamp Duty land Tax](#)²⁵ from 14 August 2018.

Published 16 March 2016

Last updated 30 January 2019 [+ show all updates](#)

²³ This should provide a link to more detailed guidance at SDLTM09790.

²⁴ This guidance is in need of updating after the 1 October 2019 guidance on the meaning of "dwelling".

²⁵ The page about Webinars which this links to no longer has a link to the Webinars on the higher rates. It does have a link to what it claims to be "Detailed guidance" which instead leads straight back to this basic .gov.uk page!! There is no mention of the Webinar added on 19 August 2019 except on the list of updates, but that has no link.

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