

# THE 3% SDLT ADDITIONAL CHARGE ON ACQUISITIONS OF RESIDENTIAL PROPERTIES

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## 1 Background and Context

- 1.1 The election of the Conservative government at the May, 2015 general election has been followed by an extraordinary attack by the Chancellor, George Osborne, on its natural supporters using the tax system. Private investors, businesses, entrepreneurs and the thrifty are being targeted by the following changes in 2016:
- 1.1.1. an increase in the tax on dividends at the upper rate to 38% which means an effective rate of tax of 50% given that companies have already paid 20% corporation tax on historic profits;
  - 1.1.2. the reduction in the annual investment capital allowance from £500,000 to £200,000;
  - 1.1.3. the progressive restriction of relief for interest costs against residential rent income from 2017 to the basic 20% rate of tax only, increasing the cost of mortgage finance for the upper rate taxpayer from £55 per £100 interest to £80 per £100 interest;<sup>2</sup>

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2 Currently a buy to let landlord in the 40% tax band who earns £20,000 p.a. rent with an interest only mortgage costing £13,000 p.a., pays income tax on the £7,000 profit, i.e. £2,800 to HMRC and an after-tax return to landlord of £4,200. From 2020, tax will be charged on the full £20,000, less a tax credit equal to the basic rate on the interest, so the landlord will pay 40% tax on £20,000 (£8,000), less a 20% credit (20% of £13,000 = £2,600). HMRC therefore receives £5,400 and the landlord's after-tax return is £1,600. The landlord's tax has increased by 93% and his after tax profit margin has decreased from 21% of the rent to 8%. This, coupled with the additional 3% SDLT rate on

- 1.1.4. the reduction in tax allowable pension contributions from £50,000 to £40,000 pa and for high earners to £10,000 pa and the reduction in the lifetime allowance from £1.25m to £1m, making tax allowable pension savings for high earners marginal at best;
  - 1.1.5. the increase in the rate of SDLT on non-residential and mixed use property above £250,000 from 3% to 5%, and the doubling in the rate of tax on lease rents above £5m from 1% to 2%; and
  - 1.1.6. on top of the massive increase in the rates of SDLT on residential purchases above £937,500 in December, 2014 and the top rate increasing from 7% to 12% on the slice of consideration above £1.5m, an additional 3% SDLT surcharge on the acquisition of first and additional dwellings by purchasers who are not individuals and on additional dwellings acquired by individuals has applied since 1<sup>st</sup> April, 2016.
- 1.2 The policy driver for the change is said to be our old friend “fairness” which this time is said to be an intention to reduce price competition between first-time buyers and buy to let investors, increasing the cost of purchase for the latter. The suspicion is that this is really a tax rise masquerading as “fairness” given that it is difficult to understand how an additional 3% added to the 12% charged above £1.5m is going to assist first-time buyers. The 3% may also be intended to plug the revenue gap created by the large fall in SDLT revenue caused by George Osborne’s disastrous rate changes in December, 2014 described at 1.1.6 above. In July, 2015 the London Evening Standard<sup>3</sup> reported that the Treasury would be alarmed by the £1.58 billion fall in SDLT receipts or 26% in the first six months of 2015 despite the then rising property market. One can speculate whether the 3% measure was cooked-up over the Summer of 2015 in response to the Chancellor’s mistake over the 2014 rate reform and then presented as a “fairness” measure in the 2015 Autumn Statement for enactment on 1<sup>st</sup> April, 2016.

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purchases of additional residential properties, represents a serious attack on buy to let investors. It is interesting to note that the Labour Party would attack buy to lets using rent controls, enhanced security of tenure for tenants and licensing and greater health and safety regulation, whereas the Conservative Party have used swingeing tax increases.

<sup>3</sup> “Stamp duty rise hits London home prices with fastest fall since the crash” Evening Standard, 24 July 2015. £5,250 (3% of £175,000) = £6,250, a more than six fold increase.

- 1.3 This additional 3% SDLT charge is examined in detail in the rest of these notes.

## **2 Impact of the Additional Charge – Some Examples**

- 2.1 The existing ownership of a dwelling such as a modest pied a terre, a flat for student children or a foreign home could mean that the purchase of the additional property will attract the additional charge except where the purchaser is replacing a main residence (see below).
- 2.2 The purchase of a dwelling for £175,000 normally attracts SDLT of £1,000 (nil on the first £125,000 and 2% on the next £50,000). If this is the purchase of an additional dwelling however the SDLT is £1,000 plus
- 2.3 The purchase of a dwelling for £2,000,000 normally attracts SDLT of £153,750. If this is the purchase of an additional residential property however the SDLT is £153,750 plus £60,000 (3% of £2m) = £213,250.
- 2.4 The purchase of a dwelling for £5,000,000 normally attracts SDLT of £513,750. If this is the purchase of an additional dwelling however the SDLT is £513,750 plus £150,000 (3% of £5m) = £663,750.
- 2.5 Some awkward consequences of the additional charge that were mentioned in an article in the Daily Telegraph on 10<sup>th</sup> May, 2016 include the following:
- 2.5.1 the retired person who has a holiday home that is now too large for their needs and wishes to downsize to a smaller one freeing-up the larger one for a local family – they are put off doing so by the additional charge on the purchase of the smaller home;
- 2.5.2 the homeowners who would like to move to take up a new job but cannot sell their existing home because it is in a flood-prone area and so have been advised to let out their existing home but may not now move because of the additional charge on their new home;
- 2.5.3 the first-time buyer teacher who wishes to buy a new home with her partner who has an existing house from which he runs a business from the garage and wishes to keep it to run his business and who face an additional charge greater than the teacher's annual salary on the new home purchase;

- 2.5.4 the retiring vicar who has lived in a church owned home and who inherited a holiday cottage but has never lived in it but who now wishes to buy his own home on retirement and will face the additional charge because although he is replacing his main residence he does not own it and so cannot access the main residence replacement exception from the charge on the purchase of his retirement home;
  - 2.5.5 the couple who own 17 buy to let properties and currently live in a rented house having sold their home some years ago but who now wish to buy a new home to live in instead of renting – they will not have to pay the additional charge because of the transitional rule that treats them as replacing their main residence even though they ceased to own a main residence more than three years previously as long as they purchase before 26<sup>th</sup> November, 2018.
- 2.6 With the SDLT cost of purchase at such high levels some potential purchasers are now renting a property instead. For example a non-domiciled new-comer to the UK with an existing home overseas would face paying £663,750 SDLT on a £5m purchase. The same amount of money would however pay for a monthly rental of £11,000 for five years. Such levels of SDLT are also deterring some purchasers from moving up the housing ladder given that the £213,750 SDLT on a £2m purchase will pay the school fees for a son or daughter for their entire secondary education.

### **3 Basis of the 3% Additional Charge**

- 3.1 The charge has applied since 1<sup>st</sup> April 2016 and is levied on any acquisition that is referred to in the legislation as a “higher rates transaction”, which are broadly as follows.
- 3.1.1. the purchase of additional dwellings in England, Wales and Northern Ireland by individuals where, at the end of the day of purchase, sole or joint individual purchasers own two or more dwellings and are not replacing their main residence. The charge does not however apply where at the end of day of purchase a sole individual purchaser owns an interest in only one dwelling, or joint individual purchasers together own an interest in only one dwelling; and

3.1.2. the first and subsequent purchases of dwellings by persons who are not individuals except where the 15% rate under Sch 4A already applies.

3.2 The charge is 3% above the normal SDLT residential rates and is charged on the slices of the price of the property that fall into each band. The rates are set out in an alternative “Table A: Residential” that is substituted for the normal Table A in section 55 (1B), Finance Act 2003 for when there is a higher rates transaction and the following table shows a comparison of the rates in both versions of Table A:

<b>Band</b>	<b>Basic residential SDLT rates</b>	<b>Additional SDLT rates</b>
£0 - £125k	0%	3%
£125k - £250k	2%	5%
£250k - £925k	5%	8%
£925k - £1.5m	10%	13%
£1.5m+	12%	15%

3.3 Transactions under £40,000 do not require a tax return to be filed with HMRC and are not subject to the additional charge.

3.4 Acquisitions of mixed residential and non-residential property remain exempt from residential rates and do not attract the 3% additional charge, and are charged under the rates in Table B also using the “slice” system with a maximum rate of 5% for consideration above £250,000.

## **4 The Mechanics of the Additional Charge**

4.1 Where there is only one purchaser the acquisition is a higher rates transaction if the acquisition falls within any of paragraphs 3 to 7 of Schedule 4ZA (see below) and where there are two or more purchasers, the acquisition is a higher rates transaction if the acquisition falls within any of paragraphs 3 to 7 of Schedule 4ZA in relation to any of the purchasers.<sup>4</sup> This test is also applied to married couples and civil partnerships where one of them acquires alone as a sole purchaser.<sup>5</sup>

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<sup>4</sup> Paragraphs 2(1) – (3), Sch 4ZA.

<sup>5</sup> Paragraph 9, Sch 4ZA.

Leases granted originally for 7 years or less are outside the scope of the additional charge.<sup>6</sup>

- 4.2 The legislation treats the acquisition of a single dwelling and the acquisition of multiple dwellings separately and within each category, deals first with acquisitions by individuals and then acquisition by purchasers who are not individuals.
- 4.3 An acquisition falls within paragraph 3 of Schedule 4ZA if the purchaser is an individual purchasing a major interest<sup>7</sup> in a single dwelling and Conditions A to D below are met:
  - 4.3.1. Condition A is that the chargeable consideration is £40,000 or more;
  - 4.3.2. Condition B is that at the effective date of the transaction, the dwelling is not subject to a lease with more than 21 years left to run;
  - 4.3.3. Condition C is that at the end of the day of the effective date of the transaction, the purchaser owns a major interest in another dwelling which has a market value of £40,000 or more and that interest is not subject to a lease with more than 21 years left to run;
  - 4.3.4. Condition D is that the dwelling acquired is not a replacement for the purchaser's only or main residence (see 5 below).
- 4.4 An acquisition falls within paragraph 4 of Schedule 4ZA if a purchaser, who is not an individual, purchases a major interest in a single dwelling, and Conditions A and B in paragraph 3 of Schedule 4ZA (above) are met. Therefore, a company or other entity that is not an individual is not excluded from the additional charge in relation to its first or only dwelling acquisition and cannot utilise the exception for the replacement of a main residence. In relation to such purchasers, the rates in Table A substituted by Schedule 4ZA become the default SDLT rates for the acquisition of a dwelling.

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<sup>6</sup> Paragraph 2(4), Sch 4ZA.

<sup>7</sup> "Major interest" in section 117, FA 2003 means a freehold or leasehold interest, but for the purpose of Schedule 4ZA, this phrase excludes leases granted originally for 7 years or less: paragraphs 2(4), Schedule 4ZA.

- 4.5 With regard to the acquisition of multiple dwellings, paragraph 5 of Schedule 4ZA applies if the purchaser is an individual purchasing a major interest in two or more dwellings, and Conditions A and B below are met in relation to at least two of the dwellings acquired:
- 4.5.1. Condition A is that the portion of the chargeable consideration which is attributable on a just and reasonable basis to the purchased dwelling is £40,000 or more;
- 4.5.2. Condition B is that on the effective date of the transaction the purchased dwelling is not subject to a lease with more than 21 years left to run.
- 4.6 The acquisition of multiple dwellings by an individual will also be a higher rates transaction if:
- 4.6.1. Conditions A and B in 4.5 above are met in respect of only one of the dwellings acquired;
- 4.6.2. The dwelling in respect of which those Conditions are met is not a replacement for the purchaser's only or main residence (see further below); and
- 4.6.3. At the end of the day of the effective date of the transaction, the purchaser owns a major interest in a dwelling other than one of the purchased dwellings which interest has a market value of £40,000 or more and is not subject to a lease with more than 21 years left to run.
- 4.7 An acquisition falls within paragraph 7 of Schedule 4ZA if a purchaser who is not an individual, purchases a major interest in two or more dwellings and Conditions A and B in 4.5 above are met in respect of at least one of the purchased dwellings.

## **5 Main Residence Exception**

- 5.1 The exception from the additional charge for main residences is slightly curious because it entrenches the position of those individuals who own two or more dwellings, one of which is a major interest in a dwelling that was the purchaser's only or main residence at the time of the introduction of the additional charge on 1<sup>st</sup> April, 2016 (or up to three years before that, prior to the purchase). It does this by conferring on

such persons the facility to *replace* that dwelling with another to be used as the individual's only or main residence without having to pay the additional charge, in contrast with those persons who purchase a main residence having previously not owned the freehold or a lease of more than seven years of a dwelling used as such in the previous three years, but who otherwise own a major interest in a dwelling as, say, an investment or through inheritance.<sup>8</sup>

- 5.2 The main residence exception is of course only available to purchasers who are individuals and not to companies or other types of purchase. The exception is only available for the acquisition of a dwelling that replaces the purchaser's only or main residence because one of the tests for a higher rates transaction is Condition D in 4.3.4 above, i.e. that the dwelling acquired is not a replacement for the purchaser's only or main residence. The legislation then sets out what is treated as a replacement of an only or main residence for the purpose of Condition D.
- 5.3 Where the previous main residence has been disposed of before or on the same day as the acquisition of the new dwelling, the new dwelling will be treated as the replacement and thus exempt from the additional charge if:
- 5.3.1. On the effective date of the transaction the purchaser intends the new dwelling to be his only or main residence;
  - 5.3.2. The purchaser, their spouse or civil partner have disposed of a major interest in a dwelling in the three years ending with the effective date of the transaction;
  - 5.3.3. At any time during that period, the old dwelling was the purchaser's only or main residence; and
  - 5.3.4. During that period, the purchaser, their spouse or civil partner have not acquired a major interest in any other dwelling with the intention of it being the purchaser's only or main residence since the disposal of the previous main residence.<sup>9</sup>

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<sup>8</sup> There is also a time limited relief that allows someone who has disposed of their only or main residence at any time before 1st April, 2016 to access the replacement of main residence exception on the purchase of a new main residence on or before 26th November, 2016.

<sup>9</sup> Paragraph 3(6), Schedule 4ZA.

5.4 Where the purchaser's existing only or main residence has not been disposed of by the date of the acquisition of the new dwelling, the new dwelling will become a replacement for the purchaser's only or main residence if:

5.4.1. On the effective date of the transaction, the purchaser intends the new dwelling to be his only or main residence;

5.4.2. In the period of three years beginning on the day after the effective date of that transaction, the purchaser or their spouse or civil partner disposes of a major interest in another dwelling; and

5.4.3. At any time during the three years ending with the effective date of the purchase of the new dwelling, the other dwelling was the purchaser's only or main residence.<sup>10</sup> For the effect of this on the acquisition of the new dwelling, see 5.6 below.

5.5 The tests in 5.3 and 5.4 above also apply where an individual purchases multiple dwellings within 4.6 above where only one of the dwellings meets Conditions A and B in 4.5 above, so that if either main residence replacement test is met, the dwelling concerned will be a main residence transaction, so that it will not meet the test in 4.6.2.<sup>11</sup> This means that when purchasing less than six dwellings in a single transaction, the main residence exception will only be available where only one of the dwellings purchased is worth £40,000 or more and is not subject to a lease of more than 21 years. The important point here is if one is replacing one's main residence as part of a purchase of up to five dwellings, only one property should be for £40,000 or more and not subject to a lease of more than 21 years or else the exception for the replacement of a main residence cannot apply.

5.6 In a case where the acquisition of a new dwelling will become a replacement for the purchaser's only or main residence but the latter has not been disposed of at the date of acquisition of the new dwelling, the acquisition is initially treated as a higher rates transaction. However, the acquisition of the new dwelling ceases to be a higher rates transaction if the previous or only main residence is disposed of within three years beginning with the day after the effective date of the acquisition of the

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<sup>10</sup> Paragraph 3(7), Schedule 4ZA.

<sup>11</sup> Paragraph 6(2), Schedule 4ZA.

replacement dwelling.<sup>12</sup> In such cases, a disposal that causes an earlier purchase to cease to be a higher rates transaction cannot also make a later purchase into a replacement of a main residence within 5.3 above.

- 5.7 When an acquisition of a dwelling ceases to be a higher rates transaction because of the subsequent disposal of the main residence, the time limit for amending the SDLT return for the acquisition of the replacement residence to notify HMRC that this acquisition has ceased to be a higher rates transactions is the later of the normal time limit for 12 months from the filing date for the acquisition and three months after the disposal of the previous main residence.<sup>13</sup> The normal requirement to supply HMRC with the relevant contract, etc with the notice of amended return is waived in relation in such cases.<sup>14</sup> The filing of such an amended return should lead to a repayment to the purchaser of the additional charge that was paid on the acquisition of the new dwelling.

## **6 Married Couples and Civil Partners**

- 6.1 Married couples and civil partners are treated as one unit (as for the CGT principal private residence exemption, but no election is available if they own more than one residence) unless they are separated under a deed of separation or a court order.
- 6.2 Accordingly, they can own only one dwelling between them for the purpose of the additional charge and the purchase jointly or individually of an additional dwelling attracts the 3% charge.
- 6.3 A dwelling owned by a couple's child under 18 is also taken into account and treated as if it was owned by the couple.<sup>15</sup>
- 6.4 If the couple live together or apart but are not estranged and have two residences then which is their main residence will be a question of fact.
- 6.5 The following examples illustrate the position.

6.5.1. Mr A and Mrs B own two dwellings consisting of a buy to let and their main residence. They sell their main residence and

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12 Paragraph 3(7), Schedule 4ZA.

13 Para 9(3), Schedule 4ZA.

14 Para 8(4), Schedule 4ZA.

15 Paragraph 12, Schedule 4ZA.

purchase a new one. The 3% will not apply because although they own two dwellings at the end of the day of the purchase they have replaced their main residence.

6.5.2. However if they sell the buy to let and buy a pied a terre in London they will own two dwellings at the end of the day of purchase and are not replacing their main residence so the 3% applies.

6.5.3. Ms X and Ms Y are civil partners and live in Ms X's property. They separate under a deed of separation and Ms Y then buys her own property. The 3% will not apply because Ms Y owns only one dwelling at the end of the day of her purchase and she is no longer living with Ms X.

## **7 Joint Purchasers and Partnerships**

7.1 Joint purchasers are treated as one unit for the purpose of the additional charge, as for married couples.

7.2 If at the end of the day of a joint purchase any one of the joint purchasers has an interest in two or more dwellings and is not replacing a main residence then the additional charge applies to the total consideration.<sup>16</sup>

7.3 For example, if A and B own a buy to let jointly and B then buys a dwelling of his own – at the end of the day B owns an interest in two dwellings so the 3% charge applies.

7.4 Z and Y purchase a dwelling together to live in which will be Z's first property but Y already owns another dwelling that she is keeping – at the end of the day Y owns two dwellings so the 3% charge applies to the total consideration for the dwelling.

7.5 Partnerships are treated as joint purchasers<sup>17</sup> and the additional charge will apply to a purchase by a partnership if any partner owns an interest in more than one dwelling at the end of the day of the purchase (whether as a partner or privately). However, there is a limited exception to this rule in cases where a person who is a partner in a partnership does not enter into

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<sup>16</sup> Paragraph 2(3), Schedule 4ZA.

<sup>17</sup> Paragraph 2(1)(a) and (b), Schedule 15.

the transaction for the purposes of the partnership.<sup>18</sup> A dwelling held by the partnership for the purposes of a trade carried on by the partnerships is ignored for the purposes of the purchase by the partner in deciding whether the tests in paragraphs 3 and 6 of Schedule 4ZA apply (see 4.3 and 4.6). This protection is not available where the test in paragraph 5 of Schedule 4ZA applies (see 4.5 above).

## 8 Interaction with Multiple Dwellings Relief (“MDR”)

- 8.1 MDR allows the buyer of multiple dwellings to pay SDLT at the rates appropriate to the average price of each of the properties purchased.
- 8.2 When six or more dwellings are purchased HMRC permits the buyer to choose between paying the non-residential rates of SDLT in Table B on the entire price or at the residential rates under Table A on the average consideration for each of the properties under MDR.
- 8.3 This choice continues for purchasers who are individuals under the additional charge when the alternative Table A applies with the 3% added to the normal rate if MDR is claimed or the 3% not charged if the rates under Table B are opted for.
- 8.4 For example, A buys 10 dwellings for £3m. The average price is £300,000. A can choose to claim MDR and pay tax on the average price under the rates in the alternative Table A =  $£14,000 \times 10 = £140,000$  SDLT. However he can instead opt for the non-residential rates under Table B on the whole price = £139,500 SDLT.
- 8.5 Solicitors should advise clients of the choice available to them to enable clients in this position to pay the lower amount of SDLT, or face a negligence claim, eg *Mansion Estates Ltd v Hayre & Co* [2016] EWHC 96 (failure to advise on the availability of sub-sale relief).

## 9 Settlements and Bare Trusts

- 9.1 The beneficiary of a settlement who, under the terms of the settlement is entitled to occupy a dwelling for life or to income earned in respect of a dwelling, will be treated as the purchaser of a dwelling acquired by the trustees, for the purposes of the additional charge. This displaces the

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<sup>18</sup> Paragraph 14, Schedule 4ZA.

normal SDLT rule which treats the trustees of a settlement as the purchaser. Where the trustees of a bare trust purchase a lease of a dwelling, the beneficiary of the bare trust is treated as the purchaser for the purpose of the additional charge. This displaces the normal SDLT which treats the trustees of a bare trust as the purchaser on the grant of a lease.<sup>19</sup>

- 9.2 An existing dwelling owned by a settlement will be treated as owned by a beneficiary who is entitled to occupy the dwelling for life or to income earned in respect of the dwelling for the purposes of the additional charge. The beneficiary of a bare trust which owns a dwelling is also treated as the owner of the dwelling, including where the interest in the dwelling is a lease. A disposal of the dwelling by the settlement or bare trust is treated as a disposal by the beneficiary for the purposes of the additional charge.<sup>20</sup> The interests of a beneficiary under 18 years of age are attributed to its parents and any spouse or civil partner living together with one of the child's parents.<sup>21</sup>
- 9.3 Individual trustees of a settlement who purchase a dwelling where there are no beneficiaries entitled to occupy for life or to income from the dwelling will be treated as the purchaser but they are in effect treated as if they were not individuals so that paragraphs 4 and 7 of Schedule 4ZA apply (see 4.4 and 4.7 above). This means that there is no exclusion for such trustees from the additional charge in relation to a first or only dwelling acquisition and the main residence exception is not available.<sup>22</sup> There is therefore no advantage in creating a series of settlements each acquiring only one dwelling.

## 10 Inherited Dwellings

- 10.1 A limited exception in relation to the additional charge is available for a purchaser of a dwelling who is an individual who has inherited an interest in a dwelling jointly with one or more other persons where the individuals share, does not exceed 50%. The individual's joint interest in the inherited property is ignored when applying the tests in Condition C of paragraph 3 of Schedule 4ZA (see 4.3.3 above) during the period of three

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<sup>19</sup> Paragraph 10, Schedule 4ZA.

<sup>20</sup> Paragraph 11, Schedule 4ZA.

<sup>21</sup> Paragraph 12, Schedule 4ZA.

<sup>22</sup> Paragraph 13, Schedule 4ZA.

years beginning with the date of the inheritance.<sup>23</sup> However, if the individual's beneficial share in the dwelling exceeds 50% at any time during those three years, the exception is, from that time, no longer available. For this purpose the interests of the individual and any spouse or civil partner are aggregated and in the case of joint tenants, the interest of the individual will be deemed to exceed 50% if the individual and any spouse or civil partner are beneficially entitled as joint tenants and there is no more than one other joint tenant who is so entitled.

## **11 Alternative Finance**

- 11.1 In an alternative finance transaction the financial institution will typically purchase the dwelling from the vendor followed by a sale or a lease to the ultimate individual purchaser. This would result in the financial institution being liable to the additional charge on its purchase. However, an exemption is being introduced retrospectively to exempt the financial institution from the additional charge except where the ultimate purchaser owns another dwelling at the end of the day of the effective sale of the transaction and the purchase is not a replacement of the individual's previous only or main residence. In the case of a subsequent sale of a previous main residence which causes the financial institution's acquisition to cease to be a higher rates transaction under paragraph 3(7), Schedule 4ZA (see 5.4 and 5.6 above), only the financial institution will be able to claim a refund of the overpaid tax.

## **12 Conclusions and Planning for the Additional Charge**

- 12.1 The higher rates inclusive of the 3% charge may come to be seen in time as the default SDLT charge and the single property/main residence replacement purchase viewed as a "relief" i.e. is this a disguised tax increase wearing a "fairness" mask.
- 12.2 This large tax rise on residential purchases may encourage further renting rather than buying causing rent increases which in turn affect generation rent's ability to put aside enough for a purchase deposit.
- 12.3 Planning to avoid the 3%:
- six-or-more residential properties purchased in a single transaction (in this regard it is worth noting the surprising effect

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<sup>23</sup> Paragraph 15, Schedule 4ZA.

of purchasing a share in the freehold of a block of six or more flats together with the purchase of one of the flats, particularly where the flats are very highly priced);

- purchase of property used for mixed residential and non-residential purposes;
- residential property purchased with a non-residential property;
- residential property purchase which is ‘linked’ to the purchase of a non-residential property;
- “crowd purchasing” via the web of 6 + residential buy to lets;
- be careful if wishing to rely on the exception for replacing a main residence and purchasing two to five dwellings at the same time as only a limited range of acquisitions qualify (see 5.5 above). In such cases, consider buying in two separate linked transactions to avoid the restriction in paragraph 6, but watch section 75A, FA 2003;
- if de-enveloping a dwelling in situations where there is a mortgage debt on the dwelling so that there is the potential for an SDLT charge if the debt is assumed by the shareholder, the additional charge will apply to the consideration if the transfer meets the conditions for a higher rates transaction, so, for example, the assumption or satisfaction of mortgage debt of say £1m would normally attract SDLT of £43,750 but this will be £73,750 where the shareholder already owns one or more dwellings.

12.4 Solicitors filing SDLT returns for the purchase of dwellings in England, Wales and Northern Ireland by foreign buyers should obtain a signed statement from their client as to whether they already have an interest in a dwelling abroad in order to support their filing position if the additional charge is not being paid.

12.5 The purchase of a dwelling by a company, trustees of certain settlements and other non-individuals will usually attract the additional charge and so solicitors filing SDLT returns should adopt the alternative Table A as a default in such cases unless they are supplied with sufficient evidence by their client that the “normal” Table A rates apply.

- 12.6 In relation to linked transactions, where one transaction is chargeable at normal rates and the other is a higher rates transaction, an extended computation is needed based on both the rates in the normal Table A and the rates in the alternative Table A. For example if X and Y who are related each purchase a dwelling for the same vendor in a linked transaction with X paying £600,000 for his dwelling as a replacement main residence and Y paying £400,000 for his dwelling as a second home, the relevant consideration will be £1,000,000. Total SDLT on this amount under the normal Table A will be £43,750 and under the alternative Table A will be £73,750. X should pay  $£43,750 \times 6/10 = £26,250$  (compared with £20,000 for an unlinked transaction). Y should pay  $£73,750 \times 4/10 = £29,500$  (compared with £22,000 for an unlinked transaction).