

Briefing Note

LBTT: The New 3% Surcharge on Certain Dwellings

Introduction

In its draft Budget on 16th December 2015, the Scottish Government announced its intention to introduce a 3% Land and Buildings Transaction Tax (LBTT) surcharge on the acquisition of certain dwellings. This followed an announcement by the UK Government in November of its intention to levy a 3% Stamp Duty Land Tax (SDLT) surcharge on the acquisition of certain dwellings.

The new charge is targeted mainly at the purchase of second homes and buy-to-let properties. The aim is to discourage investment in these types of properties to make it easier for people seeking to purchase their main home to do so at a reasonable price. The new surcharge will be introduced with effect from 1st April 2016.

Draft legislation on the additional LBTT charge has been published so we now have some insight into how these new rules will operate.

In what circumstances will the surcharge arise?

The new rules will apply where an individual purchases a dwelling and, at the completion date, they already own a dwelling. Therefore, this will catch people buying second homes, holiday homes, flats for their student children and buy-to-let properties.

A transaction will not be caught if the purchaser is replacing their “only or main residence”. An individual will be regarded as replacing their only or main residence where they intend to occupy the new dwelling as their only or main residence and, within the 18 months immediately prior to the acquisition of the new property, the purchaser sold a dwelling that they previously occupied as their only or main residence at some time during that 18 month period. Therefore, people who choose to sell their old residence before buying their new residence will not suffer the 3% LBTT surcharge.

The position is different for those people who choose to buy their new residence before they sell their old one. In this situation, the purchaser will have to pay the 3% LBTT surcharge up-front at the same time as they pay the normal LBTT liability. If they then sell their former residence within 18 months of acquiring their new residence, they will be able to claim repayment of the LBTT surcharge at that time.

In addition, the surcharge will automatically apply to any dwelling acquired by a company and to any dwelling acquired by an individual in the course of a business that consists of or includes acquiring dwellings. This provision will catch anyone who acquires a dwelling for property development or property letting purposes – even if they do not already own another dwelling.

How is the surcharge calculated?

The surcharge will be an “additional amount” of LBTT payable over and above the normal LBTT payable under existing legislation.

This additional amount will be equivalent to 3% of the chargeable consideration, unless the chargeable consideration is less than £40,000. Where the acquisition comprises solely residential property, the 3% charge will be applied to the entire consideration. Where the acquisition is a combination of residential and non-residential property, the 3% charge will apply only to the element of the total purchase price referable to the dwellings based, on a just and reasonable apportionment of the price.

By way of example, an individual buying their first flat for £180,000 would pay LBTT of £700. In contrast, an individual acquiring the same flat for buy-to-let purposes would pay the normal LBTT charge of £700 plus a surcharge of £5,400 (being 3% of £180,000) taking their total LBTT liability to £6,100. Similarly, a couple buying their main residence for £450,000 would pay LBTT of £18,350 but a couple buying the same property as a holiday home would pay total LBTT of £31,850.

The increased LBTT liability is significant. Anyone currently in the process of buying a dwelling, or thinking of buying a dwelling, that will be caught by the new 3% surcharge would be well advised to take steps to bring the completion date forward to 31st March 2016 or earlier.

When does a purchaser own another dwelling?

Although the surcharge will only apply to the acquisition of properties located in Scotland, in determining whether an individual already owns another dwelling at the time of the acquisition, properties located in the rest of the UK and overseas will count for this purpose.

An individual is treated as being the owner of a property not only when they own it themselves but also where it is owned by their spouse, civil partner or co-habitant or by any child of such a person who is under 16 years old. The intention here is to prevent couples from circumventing the charge by owning their main home solely in the name of one partner and buying a second property in the name of the other partner or one of their minor children.

In the case of joint purchasers, the surcharge will apply if any one of the purchasers already owns a dwelling (and is not replacing that dwelling as their only or main residence). Therefore, if two brothers buy a holiday home for the use of their respective families and one brother already owns his own home while the other brother merely rents his main home, the 3% surcharge will apply to the whole of the purchase price paid for the holiday home.

Where trustees of a trust own or are acquiring a dwelling, a beneficiary under the trust can be treated as the owner or buyer in certain circumstances where the beneficiary has a relevant interest in the dwelling or dwellings owned by the trust. An individual will have a relevant interest in a trust dwelling if they are entitled to occupy it, receive rental income or obtain repayment of the capital value of the dwelling.

A dwelling with a market value of less than £40,000 will be ignored altogether.

Only or main residence

In most cases it will be obvious whether or not a particular property has been an individual's only or main residence. However, there will inevitably be situations where an individual owns more than one dwelling that could potentially be regarded as his or her main residence. Revenue Scotland acknowledge this issue and intend to publish guidance on the factors it will consider in determining which of a number of properties should be regarded as an individual's main residence.

Other Issues

There are some areas where further detail is awaited. For example, it is unclear how the interaction between the 3% surcharge and multiple dwellings relief is intended to operate. Also, the Scottish Government has indicated that it may introduce reliefs for certain types of investment but its policy decision in this area will not be confirmed until various representations have been considered in more detail.

Please note that this briefing note is intended as a short summary of the new 3% surcharge of Land and Buildings Tax (LBTT) on certain dwellings. No responsibility can be accepted for any action taken in reliance on this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice.

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