

# March 2016 Budget Announcements relevant to SDLT



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# March 2016 Budget Announcements relevant to SDLT

[The Autumn Statement, presented by the Chancellor on 25 November 2015, included some significant announcements on SDLT on which we commented previously.](#) This was followed by the publication of a consultation document detailing proposals for the introduction of the 3% SDLT surcharge on purchases of additional residential properties. That consultation ended on 1 February 2016 and, included in the documents released following the budget presentation yesterday, were draft legislation for the additional 3% rate together with detailed guidance on how the additional rate will apply. The Chancellor also announced a radical reform of the structure, rates and thresholds for purchases of non-residential (which for this purpose generally includes mixed use) properties and for charging SDLT on rent payable in respect of non-residential (including mixed use) properties. The changes to the SDLT charges for non-residential land transactions apply where the transaction has an effective date on or after 17 March 2016 (subject to transitional rules).

It will now be important for property lawyers and their clients to recognise that there will be four categories of SDLT rules which will apply for property purchases. These are as follows:

- acquisitions of non-residential or mixed use property, the new rules for which apply where the effective date if a transaction is on or after 17 March 2016 (subject to transitional rules);
- residential property subject to the (current) standard residential SDLT rates;
- residential property subject to the 3% surcharge, which is referred to in the draft legislation as a “higher rates transaction”. These rates potentially apply to acquisitions with an effective date on or after 1 April 2016, subject to transitional relief;

- residential property, including “mixed use” property which includes a dwelling with a value of more than £500,000 to which the 15% rate applies.

## Non-residential property

[The Government has published detailed guidance on the new rules which is available here.](#) The new rules apply to transactions with an effective date on or after 17 March 2016. The draft legislation provides for purchasers of non-residential or mixed use properties to be charged to SDLT as follows:

Relevant Consideration	Percentage
So much as does not exceed £150,000	0%
So much as exceeds £150,000 but does not exceed £250,000	2%
The remainder (if any)	5%

The new SDLT rates are applied to each slice of the consideration which falls within the relevant band and this replaces the slab system, under which the same rate applied to the total consideration if it exceeds the relevant threshold. With hindsight, the slice system of SDLT rates chargeable on non-residential and mixed property is consistent with that which was introduced in respect of residential property with effect from 4 December 2014.

The guidance published by HMRC is quite detailed and contains numerous examples of how the new rules will apply, including guidance on how the new rules will apply to linked transactions (see Chapter 4 of the Guidance) and the transitional rules which apply where contracts were exchanged before 17 March 2016 but are completed on or after that date (see Chapter 3 of the Guidance). The guidance also includes commentary on what is regarded as "non-residential property", which includes confirmation that, as a general rule, the purchase of six or more residential properties acquired in a single transaction is treated as "non-residential property". However, in such cases the purchaser may be entitled to claim multiple dwellings relief, which, depending on the average purchase price per dwelling, might result in a lower SDLT charge based on the residential rate, since those rates will apply (but with the 3% surcharge) if this relief is claimed (see below).

The Chancellor also announced important changes to the SDLT charge on rents under leases of non-residential or mixed use properties. The changes are as follows:

- a new 2% rate band will apply to the extent that the net present value of the rents exceeds £5,000,000;
- the "£1,000 rule" will cease to apply. The effect of this is that the 0% SDLT rate will apply to premiums paid on leases of non-residential or mixed use properties of up to £150,000, even if the rent is above £1,000 per annum (see the example in Chapter 2 of the attached Guidance).

### 3% surcharge on purchases of additional residential properties.

[HMRC has published detailed guidance on purchases of additional residential properties which is available here and we would add the following comment:](#)

- the surcharge will apply to all purchases of residential property with an effective date on or after 1 April 2016, except where the purchaser is an individual who satisfies certain conditions, and subject to transitional rules. So, companies purchasing residential property will be subject to the surcharge and the guidance makes it clear that there will be no reliefs from the surcharge for such purchasers;
- individuals purchasing residential property with an effective date on or after 1 April 2016 will not be subject to the surcharge if certain conditions are satisfied. The relevant conditions are, broadly as follows:
  - upon completion the purchaser must not have a major interest (ie a freehold or leasehold interest) in a dwelling other than the one which is purchased, subject to the exception mentioned below. Interests in dwellings with a market value of less than £40,000 and reversionary interests subject to a lease of more than 21 years are ignored for this purpose;
  - the sole exception to the above is where the dwelling which is being acquired is a replacement for the purchaser's only or main residence. The new dwelling (including a dwelling outside the UK) will count as a replacement of a main residence if, either, the property previously used as the main residence was disposed of within 3 years prior to the

effective date of the acquisition of the new residence or if the property used as the main residence is disposed of within 3 years after the effective date of the transaction;

- where the main residence is disposed of after the effective date of the transaction the surcharge must be paid and, then, reclaimed by an amendment to the land transaction return. In that event, the amendment claiming the refund must be made by letter to the Birmingham Stamp Office within 13 months of the effective date of the transaction or within 3 months of completion of the sale of the former residence (whichever is the later).

In determining whether an individual owns or has an interest in another residential property:

- properties owned by individual's spouse or civil partner will be treated as owned by the individual, unless the individual is separated from the spouse or civil partner in circumstances where the separation is likely to be permanent;
- interests in properties beneficially owned by minor children of the individual will be treated as owned by the individual;
- where the property is acquired by trustees, then:
  - in the case of a bare trust the property is treated as owned by any individual who is a beneficiary of the trust;
  - in the case of an interest in possession trust the property is treated as being owned by the beneficiary having the interest in possession; and

- in the case of settlements without an interest in possession, such as a discretionary trust, the trustees will be subject to the surcharge;
- a property acquired by inheritance will count as being owned by the individual who has inherited it, unless the property was acquired within 3 years prior to the effective date of the transaction and the individual's share in the property does not exceed 50%. For this purpose properties inherited by individual's spouse will count as being owned by the individual;
- whether a property which is disposed of is an only or main residence will be a question of fact. Whether the property being acquired is a main residence which "replaces" a previous residence is a question of intention. See paras 3.30 – 3.36 of HMRC's Guidance.
- The surcharge will apply only to acquisitions of "dwellings", see Chapter 2 of the Guidance.
- The surcharge will apply in cases where two or more dwellings are acquired, save where 6 or more dwellings are acquired in a single transaction.
- Where two or more dwellings are acquired in a single or linked transactions (including a single transaction in which 6 or more dwellings are acquired) it may be possible to claim multiple dwellings relief on which there is commentary in para 5.12 of the Guidance.

# 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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