



First Time Buyers' Relief

# SDLT Guide

BLAKE   
MORGAN

**CONTENTS**

---

1 Introduction ..... 1

2 Reduced amount of SDLT ..... 2

3 Who are first time buyers? ..... 3

4 What about joint buyers? ..... 12

5 Single dwelling requirement including granny flats ..... 13

6 A nasty catch with the higher rates ..... 14

7 Complications around part shares and “purchaser” ..... 20

8 Shared ownership leases ..... 23

9 Linked transactions ..... 26

10 Alternative finance ..... 28

11 Other “funnies” ..... 29

12 Calculator and return ..... 30

13 Wales and Scotland ..... 30

## 1 INTRODUCTION

It was announced<sup>1</sup> in the Budget on 22 November 2017 that relief from Stamp Duty Land Tax (SDLT) became available for first time buyers paying up to £500,000 for a dwelling within England, Wales<sup>2</sup> and Northern Ireland completing<sup>3</sup> on or after Budget Day. There is no end date built into the relief.

First time buyers' relief can be available even if contracts were exchanged before the date of the Budget. But for those who completed the purchase before the Budget there is no ability to take advantage of the relief<sup>4</sup>.

The legislation was enacted by Finance Act 2018 section 41 which added a new Schedule 6ZA to the Finance Act 2003.

HMRC published a Guidance Note<sup>5</sup> which deals with many points. Its main weakness perhaps is the limited treatment of what is described in section 6 below as "the nasty catch" that first time buyers' relief does not apply if the higher rates of SDLT for additional properties (the 3% surcharge) apply<sup>6</sup>. There is just one sentence dedicated to it (see Chapter 6 of the Guidance Note).

The Budget of 29 October 2018 extended first time buyers' relief so that it could apply (where the other conditions are met) to the purchase of a shared ownership property even without making the election to pay SDLT on the market value of the property. The changes were made retrospectively, so allowing refunds.

---

<sup>1</sup> See <https://www.gov.uk/government/publications/stamp-duty-land-tax-relief-for-first-time-buyers> for the draft clauses and supporting papers.

<sup>2</sup> See section 13 below for transactions in Wales from 1 April 2018.

<sup>3</sup> Strictly speaking the relief can apply if the "effective date" of the transaction is on or after 22 November 2017. This is normally completion of the purchase. Occasionally there is a prior "substantial performance" which triggers the effective date.

<sup>4</sup> This is the case even if the SDLT had not been paid by the date of Budget. (This question came up on internet forums a number of times.)

<sup>5</sup> The Guidance Note [here](#) was updated on 29 October 2018 on account of the changes made in the Budget on that date.

<sup>6</sup> The higher rates for additional properties can apply under FA03/Sch4ZA for transactions completing on or after 1 April 2016.

## 2 REDUCED AMOUNT OF SDLT

First time buyers who qualify for the relief will pay no SDLT on the first £300,000. If the price is between £300,000 and £500,000 they pay 5% on the amount in excess of £300,000 which is a reduction of £5,000 compared to the amount of SDLT they would have paid under the normal rates regime.

However, if the purchase price exceeds £500,000 then the full rates of SDLT will apply without any relief.

Price or Chargeable Consideration	First Time Buyer 22 November 2017 onwards	Normal residential rates of SDLT	Higher rates of SDLT
£30,000	£0	£0	£0
£40,000	£0	£0	£1,200
£100,000	£0	£0	£3,000
£150,000	£0	£500	£5,000
£200,000	£0	£1,500	£7,500
£300,000	£0	£5,000	£14,000
£400,000	£5,000	£10,000	£22,000
£500,000	£10,000	£15,000	£30,000
£600,000	n/a	£20,000	£38,000
£1,000,000	n/a	£43,750	£73,750
£2,000,000	n/a	£153,750	£213,750

The table above shows the amount of tax at some example prices. The “chargeable consideration” will usually be the price paid for a property<sup>7</sup>, but there are some exceptions such as:

- If properties are exchanged (or part exchanged) there is a market value rule.
- If a property is acquired subject to a debt (such as where a mortgaged property is gifted) the whole or a proportion of the debt is often liable to SDLT as chargeable consideration.

---

<sup>7</sup> I am using the word “property” in this article to refer to a residential property like a house or a flat. The legislation uses the word “dwelling”. “Dwelling” for these purposes is defined in Sch6ZA/para9 and HMRC give guidance in chapter 4 of the Guidance Note. I come back to this at section 5 below.

### 3 WHO ARE FIRST TIME BUYERS?

#### 3.1 Main Definition

A first time buyer<sup>8</sup> is an individual<sup>9</sup> who has never acquired<sup>10</sup> a major interest<sup>11</sup> in a dwelling<sup>12</sup> in the UK or anywhere else in the world. A first time buyer must also intend to live in the property as their only or main residence<sup>13</sup>.

In all of the examples given below unless stated otherwise it is assumed that properties are in England, that the persons involved are single and intend to live in the property as their only or main residence. Similarly it is assumed, unless otherwise stated, that they have never had other property interests, whether shares in properties or interests in trusts holding properties. It is also assumed that they do not have minor children with interests in properties.

#### 3.2 Individuals and bare trustees

Individuals are “real people”. So another entity buying, such as a limited company or a limited liability partnership (LLP) cannot benefit from the relief<sup>14</sup>.

For the purposes of SDLT the “purchaser” is usually the underlying buyer. This is relevant if a property is bought by a nominee, or “in the name of” someone, but the underlying beneficial interest is to be held by someone else. So a person in the public eye might have a professional person or a company named as the registered proprietor on the Land Registry title, but with a declaration of trust recording where the true beneficial ownership rests. The tests for the first time buyers’ relief are applied to the underlying beneficial owner, not to the nominee / bare trustee.

There is however an exception for someone taking the grant of a lease. Oddly<sup>15</sup> the rules for first time buyers’ relief do not disregard the special SDLT rule about the identity of the purchaser where the transaction is the grant of a lease<sup>16</sup>.

##### Example 3.2.1:

Kaylee fears for her safety having been a whistle blower in a high profile case. She is to leave her parents’ home and buy a flat to live in for £400,000. For her security it will be bought in the name of a nominee.

If her nominee takes the assignment of an existing lease Kaylee will benefit from the relief and pay SDLT of £5,000.

---

<sup>8</sup> Sch6ZA/para6.

<sup>9</sup> See 3.2 below.

<sup>10</sup> Note the word “acquired” rather than “held”. See examples 3.3.1, 5.2, 5.3 and 6.4.3 below.

<sup>11</sup> See 3.3 below.

<sup>12</sup> See section 5 below.

<sup>13</sup> See 3.4 below.

<sup>14</sup> They will normally be liable for the higher rates of SDLT (with the 3% surcharge) or occasionally, if the price is over £500,000, to an even higher 15% flat rate of SDLT. For trusts buying see 3.4 below.

<sup>15</sup> This is an odd omission because the point has been picked up in other recent legislation such as that for the higher rates of SDLT, see FA03/Sch4ZA/para10(3) and (4).

<sup>16</sup> FA03/Sch16/paras 3(3) and 4.

Alternatively if she buys a new flat (so the nominee is granted a new lease to hold for Kaylee) the relief cannot apply<sup>17</sup> and the SDLT will be £10,000.

This theme is returned to at examples 4.1 and 6.4.2 below.

### 3.3 Never acquired a major interest in a dwelling

Anyone who has ever acquired a dwelling or a share in a dwelling is excluded from the relief<sup>18</sup>. The legislation uses the words “major interest”. This relies on the general SDLT definition<sup>19</sup>. However a lease for these purposes only counts as a major interest if it has 21 years or more to run at the effective date of the transaction<sup>20</sup>.

The interest acquired<sup>21</sup> had to be in a dwelling if the relief is to be excluded. The policy paper issued by HMRC on 22 November 2017 is misleading here<sup>22</sup>. The test is not about “owning” a dwelling; it is about “acquiring” a dwelling. See the example below which illustrates this issue.

#### Example 3.3.1

Alex acquired<sup>23</sup> a shop a few years ago and after completion of the purchase he converted it into a house. It was the first property he had owned. It needed extensive work as it was not suitable for use as a dwelling at the time of his acquisition. After living in it for a few years and letting it out he sold it and is now buying a property to live in.

He can qualify as a first time buyer for the upcoming purchase because at the time he acquired the major interest in the property it was not a dwelling<sup>24</sup>.

If instead Alex retains the conversion at the time of the purchase, first time buyers’ relief would be overridden by the higher rates of SDLT, see section 6 below.

See too the example at 6.4.3 of a poster on an online forum who had bought plots of land and built houses on them, but never acquired a property with a dwelling already on it. In that particular case first time buyers’ relief was not overridden by the higher rates of SDLT.

The building plot issue is also touched on in examples 5.2 and 5.3 below. We now look further at the issue of what is a “major interest”.

---

<sup>17</sup> The nominee is treated as the “purchaser” and cannot claim the relief as it is the underlying buyer, not the nominee, who intends to live in the property as their only or main residence.

<sup>18</sup> Sch6ZA/para6(1)(a).

<sup>19</sup> FA03/s117(2) defining a major interest in England and Wales as either (a) an estate in fee simple absolute, or (b) a term of years absolute, in either case whether subsisting at law or in equity. This issue is looked at in more detail below within section 3.3.

<sup>20</sup> Sch6ZA/para8. This is considered further at section 11 below.

<sup>21</sup> At the time of the acquisition the property had to be a dwelling.

<sup>22</sup> <https://www.gov.uk/government/publications/stamp-duty-land-tax-relief-for-first-time-buyers/stamp-duty-land-tax-relief-for-first-time-buyers> which says “A first time buyer is defined as an individual or individuals who have never owned an interest in a residential property ...”

<sup>23</sup> It does not matter whether Alex had bought the shop or acquired it in another way, for example by gift or inheritance.

<sup>24</sup> HMRC had confirmed this for the 2010 – 2012 version of the relief at SDLTM29850.

The major interest acquired could be an equivalent interest in a property anywhere in the world<sup>25</sup>. It would therefore exclude from the relief someone who at some time was gifted a share in a family holiday home abroad, even if they have since sold it or gifted it<sup>26</sup>.

HMRC in the Guidance Note at Q15 state that if a buyer has “*previously held<sup>27</sup> a beneficial (sometimes referred to as equitable) interest in a dwelling (except a leasehold interest of less than 21 years duration)*” that prevents them claiming the relief.” There is some question as to how this fits with the meaning of “major interest” elsewhere in the SDLT legislation<sup>28</sup>.

The definition of major interest does not include some interests under trusts falling short of a share in a property. For example a Will might have set up a trust whereby following death and probate the property is passed to trustees on terms that the widow has a right to live in the family home for life. After her death, the trust provides that the children of the family are equally entitled to the property.

- Neither the life interest, nor the remainder interests are “major interests” in a property for the purposes of first time buyers’ relief.
- Nor does a person just by virtue of being a trustee have a “major interest” in a property<sup>29</sup>.

#### Example 3.3.2

Fred died and left his house on terms that it be vested in his trustees Rita and Dorothy on trust for his widow Phyllis for life with remainder to Rita, Dorothy and Barbara. The property was duly assented to Rita and Dorothy; Phyllis lives there.

Phyllis does not have a major interest despite her life interest. Rita and Dorothy do not have a major interest by virtue of being trustees.

Rita, Dorothy and Barbara do not have a major interest by virtue of being entitled to the remainder. But when Phyllis dies they will automatically acquire a major interest.

If Barbara is in the course of buying her first home, her entitlement to first time buyers’ relief will depend on whether she completes the purchase whilst Phyllis is still alive. If she does the relief can apply. If Phyllis dies first, then no matter the value of the house left by Fred, nor how soon it is sold

---

<sup>25</sup> Sch6ZA/para6(1)(b).

<sup>26</sup> Also even if it was of very low value, such as under £40,000 which was the limit chosen for the higher rates of SDLT.

<sup>27</sup> The word “acquired” would have been better here than “held”; see example 3.3.1 above.

<sup>28</sup> There has been a debate in the context of the higher rates of SDLT whether an undivided share in a property counts as a “major interest”. See the comments of the Court of Appeal in the Kings College and Pollen case. It seems clear that for the purposes of the higher rates of SDLT and first time buyers’ relief Parliament intended that part shares be included in the definition. It would have been better to have had express wording dealing with the position as has been done for Land Transaction Tax in Wales. Why did Parliament think it was necessary to define an undivided share of a major interest as a major interest itself in FA03/Sch4A/paras 6E(7)(b) 6F(7)(b) and 6(9)(b) but not here? A Budget change with effect from 29 October 2018 was to add to FA03/Sch4ZA for the higher rates a paragraph 2(5) to say that references in that Schedule to a major interest in a dwelling include references to an undivided share. It is odd that a similar change for the purposes of clarification was not made to the provisions for first time buyers’ relief.

<sup>29</sup> Confirmed in the Guidance Note at Q16 in chapter 8. But see example 3.3.3.

after Phyllis' death, Barbara cannot be entitled to the relief. She would have acquired a major interest in the property.

See below at 6.2 for a nasty catch if someone still has a life interest in a property at the point they buy a property to live in (in the example above it would apply if Phyllis bought a property to live in whilst retaining the life interest).

Now we come on to the knotty issue of usufructs<sup>30</sup>!

### Example 3.3.3

Antonio is single and is buying his first home to live in. However his parents Franco and Anna live in a European country with a civil law code and recently gave the family home to Antonio subject to a usufruct in favour Franco and Anna who will continue to live in it. Antonio says he is the "bare owner" with his parents having full use of the property for their lifetimes. They describe it to him in terms of him having the tree but they taking the apples!

The difficulty is to establish whether Antonio has acquired a "major interest" in their home. The definition of major interest at FA03/Sch6ZA/para6(1)(b) includes a "equivalent interest in a dwelling outside England, Wales and Northern Ireland".

HMRC see many usufructs as equivalent to settlements for the purposes of inheritance tax.<sup>31</sup> They are usually seen as equivalent to interest in possession trusts: the holder of the usufruct is regarded as the life tenant and the bare owner as the remainderman. But this analysis does not apply for the purposes of capital gains tax<sup>32</sup>. There is a wide definition of "settlement" for the purposes of SDLT.<sup>33</sup>

It seems that for the purposes of SDLT one has to analyse the particular usufruct in question and determine if it creates rights equivalent to a freehold ownership, a long lease or an undivided share in land. It is thought that in many cases the rights created will be equivalent to a life interest and remainder.

Chapter 3 of the Guidance Note addresses trust interests generally, but is poorly worded. It says: "*Relief is not denied by virtue of a previous acquisition as a trustee unless the purchaser was also a beneficiary of the trust.*" The difficulty with this is that it does not distinguish between those who under the trust have a major interest (such as an undivided share in land) and those who have a lesser interest, such as a life interest or a remainder interest.

The questions and answers in Chapter 8 of the Guidance Note can be misleading in some trust cases. They say:

*"Q15. Does having held a previous interest in a dwelling include a beneficial interest?"*

<sup>30</sup> A usufruct is a right to use and enjoy another's property, it is a civil law structure with no direct equivalent in English law.

<sup>31</sup> IHTM27054, and HMRC's Trusts and Estates Newsletter April 2013 with a section on the IHT treatment of usufructs. HMRC recognises that the legal nature of a usufruct varies between jurisdictions and each arrangement needs to be considered separately.

<sup>32</sup> Apparently on the basis that the property can only be disposed of if both owners act together, so it is treated as a form of joint ownership.

<sup>33</sup> FA03/Sch16/para1(1) where it provides "settlement means a trust which is not a bare trust".



*A15. If you have previously held a beneficial (sometimes referred to as equitable) interest in a dwelling (except a leasehold interest of less than 21 years duration) you cannot claim first time buyers' relief."*

*"Q16. Can I claim relief if I have previously bought a dwelling as a trustee?*

*A16. Yes, provided that you were not also a beneficiary of the trust and you meet the other conditions."*

This guidance is poor as it does not make it clear that where trusts are involved it is having a share in a property that gives a major interest, with life interests or remainder interests not counting as major interests<sup>34</sup>. My analysis is that someone having only a remainder interest in land, whether or not they are also a trustee, does not have a "major interest" in the land within the meaning of the legislation.

When considering whether first time buyers' relief can apply we should also consider if the "override" of the higher rates applies.<sup>35</sup> But if Antonio only has a remainder interest then this should not "count against" him for higher rates purposes.

So what is the advice for Antonio? Perhaps he needs an English translation of the documents creating the usufruct and an opinion of a lawyer with knowledge of both the relevant English and civil law confirming that it is at least a reasonable view that the interest he has is not equivalent to a "major interest" for SDLT purposes. He might want to claim relief on this basis, perhaps making disclosure to HMRC of the basis for the return.

An interest in a deceased person's estate which includes a dwelling will not usually count as an interest in the property itself until the interest passes by way of assent or appropriation or when administration is complete<sup>36</sup>.

That brings us to a trap. People sometimes own a property for a short time as a result of inheritance. On the death of a person, their property is held by their personal representatives who have to administer their estate. At that point the beneficiaries have no "major interest" in the property, just a right to compel the administration of the estate. Nor are the personal representatives treated (for an acquisition in their personal capacity) as having a major interest in the estate property<sup>37</sup>. Often the property is sold during the administration. Sometimes the property is first "appropriated" to some or all of the beneficiaries; that causes a problem, see example 3.3.4 below.

The Guidance Note at chapter 8 deals with inherited property in Q 12 and 13. It says that the relief is not available *"if the inheritance resulted in you acquiring a freehold or leasehold interest"*.

---

<sup>34</sup> Perhaps this poor guidance explains an unsatisfactory answer by letter to HMRC given in August 2018 to someone who enquired about the relief in a trust type situation. Their case was complicated by the fact that the property was abroad and held subject to a usufruct. The question though was based on the person being registered as an owner of the property, but actually only having a remainder interest behind a life interest. HMRC's reply appears erroneous in part where they say: *"Although ... the property ... is held in trust, where the life interest is held by another individual, your ... ownership in the property will be treated as equivalent to [a] major interest in land, so you will be unable to claim FTB relief".*

<sup>35</sup> If it was Franco and Anna buying in England and they still had the equivalent of a life interest, the higher rates override would apply to their purchase.

<sup>36</sup> Even if the property is left by way of a specific bequest, despite what is said in SDLTM09795 (concerning the higher rates).

<sup>37</sup> Guidance Note chapter 8 question 16.

Example 3.3.4:

Dante and Jaime were the executors of a Will, the estate included a house. It was a little over two years after the death before the house was sold for £25,000 more than the probate value. This exceeded the single nil rate allowance for capital gains tax for the executors. An appropriation was made to the beneficiaries (Dante, Jaime and Nerissa) as a way of giving them a direct interest in the property so that when the house was sold they realised the gains. In this way they each made use of each of their nil rate band for capital gains tax.

This now means that if Dante, Jaime or Nerissa come to buy their first home they do not count as first time buyers.

Thus if a person who would otherwise be a first time buyer has benefitted from an estate involving a property, it is important to establish whether the property was ever assented or appropriated to them. If this was the case, they do not count as a first time buyer, however large or small the value of what they received.

Looking at online forums, it is apparent that some confusion has been caused by the use of the word “purchaser” in the legislation. A person is a “purchaser” within the meaning of the SDLT legislation however they acquire their interest in the property, even if it is by gift or inheritance. It is not limited to people who have previously bought a property. Thus someone who inherited a property will be excluded from the relief if they acquired a “major interest” in the property. It can apply to prevent someone being a first time buyer even though the interest previously acquired was in the same dwelling as the one now being bought.

A person is not a first time buyer if they have previously acquired a “major interest in a dwelling”. The view of HMRC is that the dwelling could be part of a bigger property, such as a farm with a farmhouse or a self-contained flat above a shop<sup>38</sup> for the relief to be lost. But the legislation does not appear to say that<sup>39</sup>. The legislation suggests having previously acquired a mixed use property does not prevent a person being a first time buyer.

Example 3.3.5:

Mike and Lin previously acquired a pub and lived in the manager’s accommodation above it. They are now buying a home to live in for £200,000.

If the residential accommodation in the pub is not self-contained, then they did not acquire another dwelling. For example, there might only be manager’s accommodation without any kitchen, the

---

<sup>38</sup> Guidance Note chapter 3, para 4.

<sup>39</sup> Sch6ZA/para6(1)(a) refers to “a land transaction the main subject-matter of which was a major interest in a dwelling”. This contrasts markedly to the wording in FA03/s57AA for the relief from 2010 – 2012: “has not previously been a purchaser in relation to a relevant acquisition of a major interest in land which consisted of or included residential property”. The para 6(1)(a) wording can also be compared with the wording for the higher rates in Sch4ZA. Sch4ZA/para3(4) sets out condition C for the higher rates which is that “the purchaser has a major interest in a dwelling other than the purchased dwelling”. This picks up dwellings within mixed use properties, but contrasts with Sch6ZA/para6(1)(a) which seems to require the previous acquisition to comprise a major interest in a dwelling.

manager having to rely on the pub kitchen. In such a situation, they can qualify as first time buyers whether the pub is retained by them or sold.

If the residential accommodation is self-contained however (so that it could be occupied by a household who live there independently of the pub) then the analysis is more complicated.

(a) If they still own the pub they will not be entitled to relief because of the override where the higher rates apply, assuming their shares in the dwelling are worth £40,000 or more.

(b) If they have disposed of the pub, then on the wording of the legislation it appears they count as first time buyers. HMRC's view as mentioned above is that they will not count as first time buyers<sup>40</sup>.

People with shares in companies owning properties do not have a major interest in the properties owned by the company<sup>41</sup>, but it must be unusual for someone to have such company shares and never to have directly acquired a property or acquired a share in a property at all.

There is also a point about alternative finance structures<sup>42</sup>, see example 3.3.6 below and section 10 below.

**Example 3.3.6:**

Paramjit had "bought" a property previously but says it was never in his ownership. The freehold is held by a financial institution and he has a lease for less than 21 years under which he pays them a rent. He had an option to buy the property. That property has since been sold by the financial institution and Paramjit is buying another home. He wonders if he qualifies as a first time buyer.

The previous transaction was an alternative finance structure and the rules require us to look at the purchase not as having been by the financial institution, but by the person seeking finance<sup>43</sup>.

So Paramjit does not qualify as a first time buyer.

### 3.4 The intention to live in a property as an only or main residence

The legislation<sup>44</sup> requires that the person "intends to occupy the purchased dwelling as the buyer's only or main residence". The meaning of "residence" brings in notions of expectation of permanence and degree of continuity<sup>45</sup>. Someone intending to move into a property as a stop gap measure is unlikely to intend to live in it as their "residence".

---

<sup>40</sup> HMRC confirmed this view in correspondence about the Mike and Lin example whilst the Finance Act 2018 was still going through Parliament. They did not seek to amend the legislation as it passed through Parliament so as to accord with their view of what it should say.

<sup>41</sup> This was confirmed for the 2010 – 2012 first time buyers' relief at SDLTM29850.

<sup>42</sup> Explained well in the Guidance Note in chapter 6, third paragraph.

<sup>43</sup> Sch6ZA/para3.

<sup>44</sup> Sch6ZA/para1(4).

<sup>45</sup> See the capital gains tax cases and guidance on the relief for disposals or only or main residences. In the context of the higher rates of SDLT see now SDLTM09812 and the wording added at the end of March 2018 when the guidance on the higher rates was moved from the pdf updated in November 2016 to the Manual.

Example 3.4.1:

Adele wins the lottery; desperate to leave the parental home she buys a stop gap property (House A) for £300,000 to live in short term whilst she finds a bigger home to settle in. She plans then to let House A out. Her plan goes through as a few months after moving in to House A, she buys House B for £500,000 which she intends to live in as her only residence.

Adele is not entitled to relief on the first purchase because she does not intend to live in House A as her only or main residence. At the point of completion she sees it as a short term measure.

Nor will she get relief on the purchase of House B as, at the time of that purchase, she already had an interest in another property. She will have to pay the higher rates on House B.

Had she bought House B first, she would have been entitled to first time buyers' relief on House B, though the later purchase of House A would be subject to the higher rates of SDLT.

A first time buyer intending to rent out the property will not be entitled to the relief. There could be grey areas, like those buying a property to live in at some time in the future<sup>46</sup>.

In the Guidance Note at chapter 2 HMRC say *"It is not necessary that the purchaser must occupy the property immediately following purchase. At the effective date of the transaction, there must be a clear intention to occupy the dwelling as the purchaser's only or main residence and the fact that circumstances make it either impossible or impractical to immediately occupy the dwelling do not prevent relief being due"*<sup>47</sup>.

The position for trustees of settlements buying a property is that even though the "purchasers" are the trustees (who might be individuals) they would not normally buy in order to live in the property themselves, but would be buying for beneficiaries to live in or as an investment for the benefit of the beneficiaries. Therefore the purchase would not benefit from first time buyers' relief.

Example 3.4.2

John and Catherine are trustees of a settlement and buy a property for the beneficiary Abby to live in. The settlement is not a "bare trust" for Abby (where we would have treated Abby as the buyer) but is of another type, such as an interest in possession settlement or a discretionary settlement.

Because John and Catherine are the "purchasers" but are not intending to live in the property first time buyers' relief is not available.

---

<sup>46</sup> There has been some guidance in the context of the higher rates with HMRC saying they accept that a person intends to occupy a property if they delay moving in whilst repairs or works are carried out. They do not appear to accept that an intention to find a tenant to rent the property to for a while before moving in is sufficient to show an intention to live in a property as a residence. This guidance is now in the Manual at SDLTM09812.

<sup>47</sup> It is interesting to compare this to the wording in SDLTM29850 for the version of first time buyers' relief in effect from 2010 to 2012. There HMRC referred to *"an ultimate intention"* to live in it and said the relief could apply *"even if the property is let in the short term"*. At SDLTM29830 they said *"There is no requirement to occupy the property immediately, and relief will not be denied if the property is let pending occupation, but there must be a clear intention to occupy."*

Had John and Catherine been trustees of a settlement under which they were beneficiaries and have a right to occupy the property for life, then it seems that first time buyers' relief could be available to them if they have not previously acquired an interest in property and otherwise meet the conditions<sup>48</sup>.

---

<sup>48</sup> If they are trustees of say a discretionary settlement it is likely that the higher rates of SDLT would apply, overriding first time buyers' relief; see example 6.4.4 below.

#### 4 WHAT ABOUT JOINT BUYERS?

The relief can only apply where all buyers are first time buyers. If one of two buyers had previously acquired a property anywhere in the world, then the relief will not apply despite the fact that the other buyer is a first time buyer.

One usually looks to the underlying ownership as explained at 3.2 above. Because of this, the relief cannot be secured buying a property “in the name of” one of a couple who has never owned a property interest but who is to hold the property on trust partly for a person who has previously had property interests.

##### Example 4.1:

Steven and Lolita are an unmarried<sup>49</sup> couple looking to buy a home to live in together. Neither has any property interests at present, Steven never has, but Lolita owned a home which was sold a while ago.

If Steven alone buys the property the relief is available. It is not available at all if Lolita takes a share in the property even if bought “in the name of” Steven alone (unless bizarrely the acquisition is by way of taking the grant of a new lease in the name of Steven alone in trust for Steven and Lolita<sup>50</sup> when it seems the relief is available!).

See section 7 below for complications arising from HMRC’s view that when a person buys a share in a property they are joint buyers with the other people who already own a share in the property.

---

<sup>49</sup> See example 6.1.2 for a similar scenario for a married couple which also looks at the interaction with the higher rates of SDLT.

<sup>50</sup> He is then treated as the buyer for the purposes of this relief, see FA03/Sch16/para3 and section 3.2 above.

## 5 SINGLE DWELLING REQUIREMENT INCLUDING GRANNY FLATS

The relief can only apply to purchases of major interests in a “single dwelling”<sup>51</sup>. “Dwelling” for these purposes is defined in Sch6ZA/para9 and HMRC give guidance in chapter 4 of the Guidance Note.

The relief cannot apply to purchases<sup>52</sup> of “mixed use” property, such as a pub with a self-contained flat above it.

A purchase of a property suitable for use as two dwellings cannot benefit from the relief. For example a property which has a granny flat included which is capable of separate use<sup>53</sup> does not qualify for relief.

### Example 5.1:

Olivia buys a town house for £400,000. It includes a basement flat. If this is not sufficiently self-contained to enable it to be lived in independently of the rest of the house then the relief is available and the SDLT is £5,000.

If it counts as two dwellings, then first time buyers’ relief is not available. But multiple dwellings relief can give a better outcome, resulting in SDLT of £4,000<sup>54</sup>. But care would need to be taken that the higher rates do not apply, for example if the main part of the house is not worth at least 2/3 of the total value<sup>55</sup>.

### Example 5.2:

Eddie is buying a plot of land for £400,000 on which he will build a house. He is buying from a developer who will carry out some initial works including laying the foundations. Eddie will employ a different contractor to do the rest of the work after completion of the land transfer.

The analysis depends on whether the property counts as a “dwelling” on the date of the completion of the land transfer. If so, Eddie should be entitled to the relief and the SDLT would be £5,000. If not, SDLT will be due at non-residential rates. At this price the SDLT on non-residential rates would be £9,500.

The definition of “dwelling” is very similar to the one used for the higher rates of tax. If construction has reached “golden brick” or perhaps “muddy brick” (the first course of bricks above the foundations) then the property would count as a dwelling and thus Eddie would be entitled to the relief.

### Example 5.3:

---

<sup>51</sup> Sch6ZA/para 1(2).

<sup>52</sup> We are looking here at the purchase of a mixed use property. See example 3.3.5 where the previous property Mike and Lin had acquired was a pub, rather than the property Mike and Lin were about to buy.

<sup>53</sup> But multiple dwellings relief would be available to reduce the amount of SDLT. The higher rates would have to be considered too.

<sup>54</sup> This is calculated as twice the SDLT on the average price of £200,000 but with the minimum of 1% SDLT kicking in.

<sup>55</sup> See here <https://www.blakemorgan.co.uk/news-events/blog/additional-3-stamp-duty-land-tax-surcharge-granny/> for more about the SDLT treatment of granny flats and other subsidiary dwellings.

Nellie had acquired a building plot, completed the construction of the house and sold it. But she has never owned any other properties and is buying her first house for £300,000. First time buyers' relief will depend on the plot not counting as a dwelling at the time she completed the purchase. Had the construction on the plot got as far as golden brick or muddy brick by the time Nellie acquired it?

Example 5.4:

Sam and Louise are buying a flat to live in; it is in a building owned by the seller; the building comprises two flats. The lower floor flat has already been sold on a long lease; the upper flat is available with vacant possession. The seller is willing to sell them the freehold of the whole building, or if they prefer, to grant them a new long lease of the upper flat. If they proceed by taking the new lease they might qualify for first time buyers' relief. But if they proceed instead by buying the freehold the purchase will not qualify for the relief<sup>56</sup> because they will acquire a major interest in more than one dwelling<sup>57</sup>.

Example 5.5<sup>58</sup>:

Carol is buying a house from Lewis. Lewis is a farmer and is willing to sell her an adjoining field as part of the same transaction<sup>59</sup>. He will use the field after completion until harvest, then Carol intends to use the field as a recreational pony paddock. Because of the non-residential use of the field at completion the property as a whole counts as mixed use for general SDLT purposes<sup>60</sup>.

The whole property would come within the definition of "dwelling" for the purposes of first time buyers' relief because the definition<sup>61</sup> includes land "to be" occupied or enjoyed with the dwelling as a garden or grounds. So this looks forward to intentions as well as to the present use. So there is an apparent conflict between the definition of "residential property" and of a "dwelling".

The better view appears to be that the rules as to what is residential property take precedence<sup>62</sup>, so first time buyers' relief is not available and the property is taxed at mixed use rates<sup>63</sup>.

See too example 6.4.3 for another case involving building plots having been purchased.

## 6 A NASTY CATCH WITH THE HIGHER RATES

---

<sup>56</sup> Though I have heard of someone obtaining a letter from HMRC in a specific case saying that first time buyers' relief was available for a purchase structured in this way. Such replies are expressed to have no precedent value.

<sup>57</sup> Nor would they be able to claim multiple dwellings relief as one of the dwellings they buy is subject to a long lease.

<sup>58</sup> Thanks to Andrew Campbell for pointing out the issues explored here.

<sup>59</sup> See example 9.4 for the position if there was to be an option to buy the field.

<sup>60</sup> FA03/s116.

<sup>61</sup> Sch6ZA/para9(3).

<sup>62</sup> HMRC confirmed this is their view in correspondence with Andrew Campbell from January to November 2018.

<sup>63</sup> The main tax charging provision is FA03/s55. Section 55(1B) requires land to be identified as residential or as non-residential / mixed use to determine the correct table of tax rates to apply. For mixed use property this is Table B. First time buyers' relief is given effect by replacing the Table A set out in s55 with the Table A contained in Sch6ZA/para4. The point is that one never gets as far as choosing which Table A to apply, as it is Table B which applies to mixed use property.



For more complex cases there is a condition to the relief which will catch some people out and mean that first time buyers' relief is not available. Instead the higher rates of stamp duty land tax for additional properties are due (that is, the 3% surcharge applies). This is because there is a rule that the higher rates override the relief<sup>64</sup>.

What cases can one think of where a person has never acquired a major interest in property anywhere in the world, yet the higher rates (which is aimed at people buying property who already have interests in property counting against them) would apply? There follow some examples. In each case we assume a buyer who is buying a property in England to live in and who has never had a major interest in a property anywhere.

### 6.1 Marriage or Civil Partner

Take a first time buyer with a spouse or civil partner<sup>65</sup> who at the date of completion of the purchase owns another property<sup>66</sup>. It is likely that first time buyers' relief will not be available, because the relief is not available if the purchase would be a "higher rates transaction"<sup>67</sup>.

Advice should be taken here as there are nuances around the higher rates. There is an exception from the surcharge for the replacement of a main home. So the property owning spouse / civil partner might be able to take advantage of the exception, for example if he / she had previously sold a home and intends to live in the new one. If the higher rates did not apply in that situation and the first time buyer bought alone then the relief would be available<sup>68</sup>.

#### Example 6.1.1:

Jo and Jean-Jacques are a married couple. Jo has never owned a property in her life, nor had an interest in one, but has now inherited some money and is to buy a new home for the two of them to live in. Jean-Jacques owns a flat in Paris which they have always rented out.

Jo proposes to buy the property alone; the beneficial interest will belong entirely to her.

Because she is married to Jean-Jacques the availability of first time buyers' relief could be overridden by the higher rates. To establish if the higher rates are due we have to look at whether the higher rates would be due if Jean-Jacques bought the new property<sup>69</sup>. He has the flat in Paris, so the higher rates would be due unless he could benefit from the exception for the replacement of an only or main residence<sup>70</sup>. Perhaps he can benefit from the exception if he owned a property he once lived in but which has been sold<sup>71</sup>.

<sup>64</sup> Sch6ZA/para1(7). It is this rule that the Guidance Note only deals with in one sentence!

<sup>65</sup> Assuming that they are not separated.

<sup>66</sup> Take no notice of the references one sees to treating married couples "as a single unit". It is not that straightforward and one needs to apply the rules as laid down rather than applying a rough rule of thumb.

<sup>67</sup> The rules for the higher rates are set out in FA2003/Sch4ZA.

<sup>68</sup> Assuming that the entire beneficial ownership belongs to the spouse without a property.

<sup>69</sup> FA03/Sch4ZA/paras 2(3) and 9(2).

<sup>70</sup> FA03/Sch4ZA/paras 3(5) and 3(6).

<sup>71</sup> The details of the replacement exception are explained here:

<https://www.blakemorgan.co.uk/training-knowledge/features-and-articles/stamp-duty-land-tax-3-surcharge/>

Failing that, Jo does not benefit from first time buyers' relief and the higher rates of SDLT apply.

Example 6.1.2:

Nesa and Soul are a married couple. They live together in a flat which Nesa alone owns, it is the only property she has ever owned and it is worth £40,000 or more. Soul has never owned a property in his life, nor had an interest in one, but now has a sufficient income alone to buy a home for the two of them to move into. They have found a property which Soul alone can buy for £200,000. They have not decided whether to sell Nesa's flat before the purchase by Soul, or to rent it out for a while and then sell it within three years afterwards, so that Soul will be able to recover the 3% surcharge<sup>72</sup>.

Because Soul is married to Nesa the availability of first time buyers' relief could be overridden by the higher rates based on Nesa's circumstances. To establish if the higher rates are due we have to look at whether the higher rates would be due if Nesa bought the new property.

If Nesa retains the flat where they have been living, the higher rates would be due on a purchase by Nesa<sup>73</sup> and so they are due on the purchase by Soul. Even if Nesa sells her flat within three years, whilst that should enable Soul to recover the 3% surcharge, it will not retrospectively make first time buyers' relief available<sup>74</sup>. So Soul would initially pay SDLT of £7,500, recovering £6,000 when Nesa's sale completes.

If Nesa completes the sale of her flat before, or on the day that Soul completes the purchase then the higher rates are not due. So long as Soul is the only beneficial owner of the house then he is entitled to first time buyers' relief. That means that no SDLT is due in this case.

See too the examples in section 7 below for transactions involving a share passing between spouses and how the higher rates override works there.

## 6.2 Life Interests

A buyer might have a life interest in a property. It is not itself a "major interest" that disapplies the relief directly. But if it means that the higher rates would apply then the relief does not apply.

Example 6.2.1:

Monette is widow who has never owned a property in her life. Her husband had owned the family home and the family lived there. He died a while back and left the house to her for life with the remainder between their children. His estate has been administered so the house is now held on those trusts.

Monette now wishes to buy a house to live in; she plans to ask the trustees to rent out the old family home so she is entitled to the rent. Although the new house will be the only property she owns, she will not benefit from first time buyers' relief because the transaction is subject to the higher rates<sup>75</sup>.

<sup>72</sup> FA03/Sch4ZA/paras 3(7) and 8.

<sup>73</sup> FA03/Sch4ZA/para3.

<sup>74</sup> FA03/Sch6ZA/para1(7).

<sup>75</sup> Under FA03/Sch4ZA/para11 she is treated as owner of the house in trust, so the property she is buying counts as an additional property.

### 6.3 Minor child with a major interest

There is nothing in the rules for first time buyers' relief that treats a property interest held for a minor child (under the age of 18) as belonging to a parent. But in some circumstances that interest can mean the higher rates apply and that overrides the relief.

#### Example 6.3.1:

Lauren has never owned a property; she has lived in rented homes all of her adult life. She has a child Max who is 15. Lauren's father died a few years ago and left her a large sum of money and left Max his house. The ownership of the house has been passed to trustees who hold absolutely on trust for Max. Lauren is now using the money to buy a home to live in.

Although at first glance Lauren seems to qualify as a first time buyer, she is caught out by the override where the higher rates would be due. For the purposes of the surcharge Lauren is treated as owner of the property held on behalf of Max and so the higher rates will apply to her purchase, even though she is to live in the house she is buying.

See Example 11.3 for a child buying a property.

### 6.4 It gets worse!

Another example of the higher rates override is someone already owning a leasehold property where the lease was granted for 7 years or more and has less than 21 years to run.

#### Example 6.4.1:

Karl inherited the fag end of a long lease of his grandmother's flat. It had only 15 years left to run when it was assented to him recently. He has never lived in the flat, it is empty. Karl is thinking of selling it and wants to buy his first home for £400,000.

If he sells the flat before he completes the purchase, he should be entitled to first time buyers' relief as the lease, having less than 21 years to run does not count as a "major interest"<sup>76</sup>, so it does not matter that he acquired it.

However the position is different if he completes the purchase of the new property first if the leasehold flat is worth £40,000 or more. That is because of the override of first time buyers' relief where the higher rates apply. For the purposes of the higher rates a major interest includes a lease granted for a term of 7 years or more<sup>77</sup>.

---

<sup>76</sup> FA03/Sch6ZA/para8 qualifying the meaning of "major interest" for the purposes of first time buyers' relief if it is a lease with less than 21 years to run.

<sup>77</sup> FA03/Sch4ZA/para2(4) in contrast to rules for first time buyers' relief where a major interest is a lease with 21 years or more to run.

Remember Kaylee in example 3.2.1? That illustrated an oddity about purchasing a property by a nominee taking a new lease where the nominee, not the underlying beneficial owner is treated as the “purchaser”. Consider the following example.

**Example 6.4.2:**

Nick and Sue want to buy a new flat for their son Julian to live in but have it in their ownership. They hit on the idea of taking a new lease in the name of Julian but with a declaration of trust making it clear that they are the sole beneficial owners. They then wish to argue that Julian is the “purchaser”. As Julian has not previously had any property interests and intends to live in the property, they want to claim first time buyers’ relief<sup>78</sup>.

However the rules for the higher rates are likely to apply here and override first time buyers’ relief. Those rules<sup>79</sup> specifically disregard the special rule about the identity of purchaser of a new lease by a nominee. If Nick and Sue have another property at the time of the purchase of the new flat, it is likely<sup>80</sup> that the higher rates of SDLT will be due<sup>81</sup>.

See too Example 3.3.1 where Alex who had converted a shop he bought got caught out by the higher rates override.

See also Example 3.3.5 where there is doubt whether a mixed property previously acquired prevents a person being a first time buyer. If the property is still owned, they are likely to get caught out by the override for the higher rates.

**Example 6.4.3:**

The following example of how first time buyers’ relief interacts with the higher rates of SDLT comes from an online forum (hosted by Money Saving Expert) and postings made over the Christmas 2017 period.

John and Helen were proposing to buy a house together to live in; they hoped to find one for not more than £500,000. Helen had never owned a property at all. John’s position was unusual. He had bought a bare plot of land, built House A on it and lived in it (as the first property he owned) for several years. He then sold House A and went into rented accommodation. John then bought another bare plot of land. He built House B on it and lived in it. John wanted to keep House B and rent it out when he bought the new house with Helen.

Oddly John counted as a first time buyer as he had never acquired a major interest in a dwelling<sup>82</sup>. The override for the higher rates did not apply because John disposed of House A where he used to

---

<sup>78</sup> See section 3.2 above and example 3.2.1.

<sup>79</sup> FA03/Sch4ZA/paras 10(3) and (4).

<sup>80</sup> The higher rates will not apply if their existing properties are below the £40,000 threshold relevant to the higher rates.

<sup>81</sup> Compare this to example 4.1.

<sup>82</sup> The interests he acquired were in bare plots of land.

live<sup>83</sup>. The house John and Helen plan to buy together was the first dwelling John acquired since the disposal of House A. That was a pleasant Christmas 2017 surprise for John and Helen!<sup>84</sup>

Example 6.4.4:

Gareth and Hollie are the trustees of a discretionary settlement for the benefit of themselves and their children. They are to buy a house to live in. Although they own no other property they are caught out by the override of the relief where the higher rates apply<sup>85</sup>. It would be different if under the trusts they had a right to occupy the property for life.

---

<sup>83</sup> So he could benefit from the exception from the higher rates for the replacement of an only or main residence. Though if his sale was more than three years ago he needed to complete the purchase by 26 November 2018 to be able to benefit from the exception: <https://www.blakemorgan.co.uk/news-events/blog/sdlit-surchage-expiry-transitional-perio/>

<sup>84</sup> I heard from the online poster during 2018 to say he had written to HMRC with this analysis and they had agreed it. He completed well before 26 November 2018 when the three year rules would have become relevant.

<sup>85</sup> FA03/Sch4ZA/paras 4 and 13.

## 7 COMPLICATIONS AROUND PART SHARES AND “PURCHASER”

To be able to apply the rules one first needs to know who the “purchaser” is. That is normally straight forward. But what about dealings with part shares<sup>86</sup>? For example take a couple (whether married or not) where one party only owns the home and wishes to transfer a share, perhaps a half share, to the other. Sometimes this would be by a gift, but with mortgaged property there is often still “chargeable consideration” because of the liabilities concerning the debt changing.

If we call the original owner A and his partner B, then we have a situation where A transfers a half share to B. It might well be that a transfer of the registered title is also put into effect at the Land Registry so the title moves from A to A and B, but this would not always occur and should not be particularly relevant to SDLT which looks at the underlying beneficial ownership.

Such a transfer would commonly be documented by a deed of assignment of the part share from A to B. The straightforward view is that B in this case is the buyer and one should judge the availability of the relief by B’s circumstances.

HMRC are understood sometimes to take the view in these cases that both A (who is also the vendor) and B are the purchaser and so one should apply the rules by reference to the circumstances of both A and B<sup>87</sup>. It would follow from this view that as A has previously owned a property, the relief is never available in this circumstance. I do not agree with that view.

### Example 7.1:

Nolan and Lesley are married and live together in a home owned by Nolan alone but which is subject to a mortgage for £400,000. Lesley has never owned a property. It is decided that Nolan will transfer a half share of the property to Lesley. This is documented by three documents: a deed of assignment of a half share; a transfer on Land Registry form TR1 of the title into joint names and a deed the lender requires them to enter so Lesley becomes jointly liable on the mortgage.

Although the transfer is by way of gift, for SDLT purposes there is chargeable consideration of one half of the mortgage debt, so £200,000. Can Lesley obtain first time buyers’ relief on this?

If one takes the view that Lesley is the sole buyer then one would expect the relief to apply<sup>88</sup> if the intention is for Lesley to continue living in the property.

<sup>86</sup> For the issue about whether a part share is a “major interest” see section 3.3 and especially footnote 28.

<sup>87</sup> It is understood that this is the reason for the wording given for the new para 9A being added with effect from 22 November 2017 to the higher rates provisions in FA03/Sch4ZA for “spouses and civil partners buying from one another”. See also answer 6 to the “Question and Answer Briefing and Technical Note” of 24 March 2010 on the First Time Buyers Relief that was available between 25 March 2010 and 25 March 2012. This view is not expressed consistently though. See for example in the updated Guidance Note of November 2016 on the higher rates for purchases of additional properties Q8 in Chapter 8 and Examples 6 and 7 in Chapter 9. That Guidance Note has been withdrawn and Chapter 8 not carried forwards into the Manual. Examples 6 and 7 are carried forwards into the Manual at SDLT09810.

<sup>88</sup> We are not now worried about the potential higher rates override as since the Autumn Budget of 22 November 2017 this does not apply to transactions between spouses. See the new FA03/Sch4ZA/para9A.

However it is thought that HMRC sometimes take the view that both Nolan and Lesley are buyers. If so, then as Nolan has had a property interest before, the joint acquisition could not benefit from first time buyers' relief and normal SDLT would apply. This would appear to follow even though the only property Nolan ever had an interest in is their home<sup>89</sup>!

Example 7.2:

The facts could be very similar to 7.1, but as the couple are in the public eye, their home is held by a nominee in bare trust for Nolan. Nolan might then assign his half share without any change occurring in the legal title.

Are HMRC seriously saying that Nolan is then a joint "purchaser" as well as being a vendor?

It is submitted that this is wrong and Lesley should on the facts of both examples 7.1 and 7.2 be able to claim first time buyers' relief.

Example 7.3:

Stephen and Sharon are an engaged couple and will marry soon. The house they live in belongs to Stephen and his mother Nancy in equal shares. Stephen has lived there for over three years. Stephen previously acquired a flat he now rents out. Nancy is to sell her one half share of the house to Sharon for £250,000. Stephen and Sharon intend to live there long term. Sharon has never owned a property and would qualify as a first time buyer. Stephen has only ever had interests in the house and the flat.

The analysis is different depending on whether or not Stephen and Sharon marry before the acquisition of the half share. There are complications in how one applies the override where the higher rates would apply (see section 6 above) and in establishing who is the "purchaser".

A change that came in with the Autumn Budget on 22 November 2017 is to bring in an exception from the higher rates where a person already has an interest in a property and is acquiring a further interest in the same property. The interest held has to be at least a one quarter interest and the person must have lived in the property throughout the previous three years.

First we have to identify who is the purchaser. Common sense says it is Sharon alone, but HMRC sometimes have the odd view that when one buys a part share in a property one is a joint buyer with the other people already having a share in the ownership! In this case that would mean that Sharon and Stephen are both purchasers.

If we take the common sense view that Sharon alone is the purchaser there would not have been a higher rates problem if Sharon buys the share from Nancy before the marriage. Sharon would be the sole buyer of that interest and Stephen would not be treated as a joint buyer in any way. As this is Sharon's only property the higher rates should not apply to override first time buyers' relief. So she would not pay any stamp duty land tax on the acquisition of the half share.

---

<sup>89</sup> There is no requirement in Sch6ZA/para6(1)(a) that the previous major interest acquired is in "another" dwelling.

If HMRC are right in saying that Stephen is a joint buyer when Sharon buys a half share from Nancy then Stephen is not a first time buyer (he has the house and the flat). So first time buyers' relief is not available.

Or Sharon might buy the share after the marriage when Stephen is treated for higher rates purposes only as a joint buyer with Sharon. Then we have to look at the circumstances of Sharon and Stephen separately. If for either of them the higher rates are due then they are due for the whole transaction<sup>90</sup>.

(a) It is easy analysing the position for Sharon alone. It will be her only property so the higher rates would not apply to her alone.

(b) Stephen already owns another property. This is where the new rule from the Autumn Budget 2017 could help out. As Stephen already has a share of at least a quarter in the house and has lived in it throughout the last three years, the new rules mean the higher rates would not have applied to him alone on acquiring a further share in the house.

As the higher rates would not have applied to either person alone then they do not apply to the acquisition by Sharon and so Sharon can benefit from first time buyers' relief.

Changing the facts slightly in various ways changes the outcome. For instance:

(i) If Stephen had not lived in the house throughout the previous three years the higher rates override would apply to Sharon's purchase if Stephen and Sharon are married by the time of Sharon's acquisition (the new exception to the higher rates would not then apply).

Alternatively

(ii) If Stephen had not owned the other flat, but only had the half share in the house (where he has lived for over three years), then it gets more complicated still!

- If one accepts HMRC's view that he is actually a joint purchaser then because he is not a first time buyer the joint purchase still could not benefit from the relief (see section 4 above).
- If he is not actually a joint purchaser but is married to Sharon his circumstances would not have caused Sharon to lose the first time buyers' relief. The higher rates override would not have applied; at the end of the day of the transaction he would only have had one property. It would not matter that he is not a first time buyer, one looks at his position for the sole purpose of seeing if the higher rates override applies.

---

<sup>90</sup> It works that way, rather than by treating the let property as owned jointly, one does not treat a married couple as a single unit.



## 8 SHARED OWNERSHIP LEASES

### 8.1 Electing to pay SDLT on market value or in stages

Shared ownership buyers (such as those taking a shared ownership lease with a social landlord)<sup>91</sup> have a choice as to how and when to pay SDLT<sup>92</sup>. One way is to pay SDLT on the share of the home they are purchasing, and then pay further sums when they staircase to over 80% ownership (referred to as electing to pay SDLT in stages). This can involve paying SDLT on the net present value of the rents as well as on the up front price paid.

The other way is to elect to pay SDLT all in one go on the market value of the property (as stated in the lease). That would mean that there would be no further SDLT to pay on staircasing.

Buyers of properties worth over £500,000 do not qualify for first time buyers' relief and will pay SDLT in full. This includes first time buyers who are buying a share where the property is valued at over £500,000, even though they only acquire a portion of it and pay less than £500,000.

### 8.2 Retrospective changes made by 29 October 2018 Budget

First time buyers' relief can apply to those buying on a shared ownership basis.<sup>93</sup> Initially this was only if the buyer elects to pay SDLT on the full market value upfront. The position was changed with full retrospective effect by the Budget of 29 October 2018. So long as the market value of the property is £500,000 or less, the SDLT rates for first time buyers can be applied to the initial share purchased. The relief is extended by the 29 October 2018 Budget to the net present value of the rents.

The changes took effect on 29 October 2018<sup>94</sup> and apply retrospectively from 22 November 2017. A refund of SDLT can be claimed for purchases made from 22 November 2017 in cases where no market value election was made so SDLT was paid, but the purchase would now qualify for first time buyers' relief.

Some confusion was caused by press reports suggesting that the relief applied to the whole price up to £500,000, so there would be no SDLT now for transactions for between £300,000 and £500,000. That is not the case. The position is that the first £300,000 of an initial share purchased will not be liable to SDLT. The remainder of the initial share will be chargeable at 5% on amounts over £300,000. The relief does not apply to any other shares purchased (staircasing transactions). So the usual rules apply to the staircasing transaction that takes the share over 80%.

The relief can be claimed on the return or by an amendment to a return. The normal period for amending a return is 12 months from the date when the return should have been made. This is extended to 28 October 2019. The extension of the relief is expected to benefit about 1,700 first time buyers a year.

#### Example 8.2.1:

<sup>91</sup> Qualifying shared ownership schemes are provided by approved bodies such as local authorities and housing associations who help people buy a home by allowing them to buy a share of their home and pay rent on the remainder.

<sup>92</sup> FA03/Sch9.

<sup>93</sup> FA03/Sch6ZA and FA03/Sch9/para16.

<sup>94</sup> By virtue of the Budget Resolutions.

On 1 June 2018 Luc and Suzanne took a new lease for £162,500 of a 50% shared ownership property worth £325,000. They pay a 50% rent, at £8,000 pa. The lease was for 125 years<sup>95</sup>.

If they opted to pay SDLT on their share only, they did not (on the rules as they then stood) qualify for first time buyers' relief. The SDLT due would be £750<sup>96</sup> on the premium and £1,004<sup>97</sup> on the rent. They would need to pay an additional £3,125<sup>98</sup> if they come to staircase in one step to 100% (assuming the property's value has not changed).

If instead they had opted to pay SDLT on the full market value of the property, they would have qualified for the exemption, and the total bill would be £1,250<sup>99</sup>. That gives a saving of £3,629<sup>100</sup>.

If, perhaps through misunderstanding their options they had opted to pay SDLT on their share only, as a result of the 29 October 2018 Budget they now have until 29 October 2019 to amend their return and claim the £1,754 paid. The relief would not extend to later staircasing transactions, but nor would those later transactions cause the relief to be withdrawn.<sup>101</sup>

#### Example 8.2.2:

Shortly before the Budget on 22 November 2017 Xavier completed on the purchase of a flat on a shared ownership lease for 125 years paying £84,000 for a 20% share against a value of £420,000 and paying a rent of £15,000 pa.

Xavier did not elect to pay SDLT on the market value and so paid SDLT of £2,977 (being on the net present value of the rent<sup>102</sup> with nothing on the £84,000 premium).

Xavier has now inherited some money and is able to raise a mortgage to staircase to 100%. The value of the property has gone up to £450,000 so Xavier is paying £360,000 for the remaining 80% share to reduce the rent to a nominal sum. He pays SDLT on that acquisition of £9,892<sup>103</sup>.

Had he completed the purchase of the first 20% share in the property for the value of £420,000 just after the 2017 Budget and elected to pay SDLT on the market value he could have claimed first time buyers' relief and paid SDLT of £7,200. That gives a saving of £5,669.<sup>104</sup>

Let us consider the position if he had completed the purchase of the first 20% share just after the 2017 Budget and elected to pay SDLT in stages as he staircased. He would have paid the £2,977 mentioned above. But the retrospective changes made by the 2018 Budget mean he could amend

<sup>95</sup> So the net present value of the rent works out as £225,470.

<sup>96</sup> (£162,500 - £125,000) at 2% is £750.

<sup>97</sup> (£225,470 - £125,000) at 1% is £1,004.

<sup>98</sup> One takes a fraction of £162,500 / £325,000 of the tax on an acquisition for the total payments made of £325,000. SDLT on £325,000 without the first time buyers' relief is £6,250, so half is £3,125.

<sup>99</sup> SDLT on £325,000 with no significant rent and with the benefit of first time buyers' relief.

<sup>100</sup> £750 + £1,004 + £3,125 - £1,250 = £3,629.

<sup>101</sup> FA03/Sch9/para4B.

<sup>102</sup> The net present value of the rent comes to £422,757. We then take (£422,757 - £125,000) at 1% is £2,977.

<sup>103</sup> Worked out as the fraction 360,000 / (£360,000 + £84,000) of the SDLT on £444,000. SDLT on £444,000 would be £12,200, so the SDLT due is £9,892.

<sup>104</sup> £2,977 + £9,892 - £7,200 = £5,669

his return to claim first time buyers' relief so long as he applied within a year of the Budget of 29 October 2018<sup>105</sup>.

---

<sup>105</sup> A later staircasing transaction does not count as a "linked transaction" which could cause a withdrawal of the relief, see FA03/Sch9/para4B. Oddly there is a "one way" linking here. When we are looking at the acquisition of the lease it is not treated as linked to the later staircasing transactions. But when we assess the SDLT on the staircasing transaction that takes the share to over 80%, that can be linked to the original lease and other staircasing transactions. Very odd!

## 9 LINKED TRANSACTIONS

There is a general rule<sup>106</sup> that first time buyers' relief is not available if the transaction is linked to any other land transaction and there is a withdrawal of the relief if the transaction later becomes linked to another land transaction<sup>107</sup>.

There is an exception if the linked transaction is to buy garden or grounds of the dwelling or other interests for the benefit of the dwelling<sup>108</sup> so long as that does not push the total price over £500,000.

The Guidance Note deals with the issue of linked transactions fairly fully in chapter 5 and at chapter 8 question 22.

### Example 9.1:

Question 22 of the Guidance Note has someone buying a first house after the Budget of 22 November 2017 for £475,000 and then later buying some garden land from the same seller for £30,000 thus putting the total payment for the two transactions over £500,000.

Under the rules, the second purchase causes a withdrawal of the relief if the two transactions are linked. The Guidance Note refers to the need to file a further return for the first transaction and pay the amount of SDLT previously relieved.

HMRC assume the two transactions are linked without considering the circumstances that might link them, such as the terms of the second deal being affected by the terms of the first, or because of arrangements made at the time of the first for the second transaction. HMRC in other guidance accept there needs to be something more to link the transactions together than that they are made between the same parties<sup>109</sup>.

### Example 9.2:

Leonora buys a long lease of a ground floor shop from the owner of the building and runs her shop from it. It has a large shop window and no kitchen and could not be described as suitable for use as a single dwelling. Later she completes a purchase for £250,000 from the same person of the flat above the shop where Leonora can then live.

If the two transactions are linked then Leonora cannot obtain first time buyers' relief. They might be linked because there was an understanding from the beginning that the seller would give her a good deal on the flat if she wanted it.

But if the transactions are not linked, perhaps because Leonora buys the flat at auction, then Leonora is able to claim the relief on the flat purchase, if the other conditions for relief are met.

---

<sup>106</sup> Sch6ZA/para1(5).

<sup>107</sup> Sch6ZA/para5.

<sup>108</sup> Sch6ZA/para1(6).

<sup>109</sup> The transactions could be linked if the split arose for example because the buyer was initially unable to afford to buy the garden land, but the seller indicated it would be available later. The transactions would be unlikely to be linked if, for example, the seller lived next door and had been keen to keep the extra garden, but later had a change of heart.

Example 9.3:

Stephen buys his first flat from a new development for £200,000 and moves in, claiming first time buyers' relief and so paying no SDLT. Stephen's sister Eline then buys her first flat in the same block from the same seller for £195,000, keen to live near her brother.

If the two transactions are linked, then on Eline buying her flat there is a withdrawal of relief for Stephen's flat and he has to pay £1,500. Eline is not entitled to relief either.

A factor that could link the transactions could be a discount given to Eline because of Stephen's purchase.

If the two transactions are not linked (for example if Eline's purchase was at auction) then both of them would be entitled to relief.

Example 9.4<sup>110</sup>:

Andrew is in a similar position to Carol in Example 5.5. He is buying a house from Lewis and would like to buy the field next to it. Andrew however cannot afford to buy the field at same time as the house. He will be given an option to buy it within the next five years. Lewis is going to continue to farm it in the meanwhile. So the purchase of the house is linked to the option.

There is a question as to whether the option is "benign" for the purposes of first time buyers' relief as being an interest in land that "is or forms part of the garden or grounds of the purchased dwelling"<sup>111</sup>. Or is it a linked transaction of a type that means the house purchase cannot benefit from the relief?

It seems likely that Andrew is not able to claim the relief as the option is over land which at the time is being used for farming<sup>112</sup>.

There is a technical reason why staircasing transactions do not count as transactions linked to the grant of a shared ownership lease so as to cause a withdrawal of the relief. That is discussed in the footnotes to Example 8.2.2. It is also not a problem if, due to increases in value, the total payments made under the lease and under staircasing transactions, exceed £500,000 (so long as the value of the property at the time of the lease was not stated to exceed £500,000).

---

<sup>110</sup> Thanks to Andrew Campbell for pointing this issue out.

<sup>111</sup> Sch6ZA/para1(6).

<sup>112</sup> This has been confirmed by HMRC in correspondence with Andrew Campbell between January and November 2018.

## 10 ALTERNATIVE FINANCE

If there are “alternative finance arrangements” (arrangements structured so as not to involve the payment of interest) then the tests are not applied to the financial institution that buys the property, but to the individual<sup>113</sup>.

### Example 10.1:

Yamil finds his first house but the purchase is made by a Bank which grants him a 20 year lease at a rent and an option to buy the property.

This is one of the alternative finance structures where for the relief one looks at the circumstances of Yamil, who will qualify, not the Bank (which would not have qualified).

So the relief is available.

See also example 3.3.6 above.

---

<sup>113</sup> Sch6ZA/para 3.

## 11 OTHER “FUNNIES”

As if enough peculiarities of the operation of the rules have not been covered already, here are some more.

### Example 11.1:

There is an oddity around a person who doesn't buy a major interest in their home. Let's say someone buys a leasehold flat with only 20 years to run. They are not buying a "major interest" and so cannot benefit from the relief.

They can potentially benefit from the relief though when they come to extend the lease!

### Example 11.2:

Didier buys a leasehold flat with only 25 years left to run. It is his first property. The seller has served notices to obtain a lease extension. Didier is to pay the seller of the lease £250,000 and will in due course pay the freeholder another £200,000 for the lease extension.

Didier can benefit from the relief on the £250,000 assignment, but not on the £200,000 extension as Didier at the time of the extension already had a major interest in a dwelling (even though it is the same dwelling).

Example 6.3 was about a case of an adult acquiring a property and the effect of a child being entitled to a property. The following example changes the facts around so the purchase is on behalf of a child aged under 18.

### Example 11.3

Max is 15 and his parents are Lauren and Jack. Lauren's father Gerald decides to buy a property for Max. Legal title cannot vest in Max as he is a minor, but the property can be bought in the name of Gerald with the beneficial interest belonging to Max. Max is the "purchaser" for SDLT. So might the purchase benefit from first time buyers' relief? In principle it could, there is no age limit on first time buyers' relief.<sup>114</sup>

What might catch Max out though is the "override" of first time buyers' relief if the higher rates apply. There are provisions in the higher rates rules<sup>115</sup> which require one to consider a purchase for a child as if made by parents of the child (and also a spouse / civil partner living with the parent). If a purchase by any of those people would have been liable to the higher rates, then the purchase on behalf of the child is liable to SDLT at the higher rates. So one would need to ask in this case if Lauren or Jack owns a property and ask about any spouse / civil partner of Lauren and Jack.

---

<sup>114</sup> Confirmed in the Guidance Note in Chapter 8 Q23.

<sup>115</sup> FA03/Sch4ZA/para12.

## 12 CALCULATOR AND RETURN

The online calculator was changed on Budget Day (22 November 2017) to allow for first time buyers: <https://www.tax.service.gov.uk/calculate-stamp-duty-land-tax/#/intro>. It was changed again on the Budget of 29 October 2018 to deal with the reformed position for shared ownership leases.

It is still the case that if the chargeable consideration (usually the price) is over £40,000 a land transaction return is needed.

Relief code 32 should be used on the land transaction return to claim the relief.

## 13 WALES AND SCOTLAND

The relief is relevant to property purchases in England, Wales and Northern Ireland where SDLT applies. However, the relief only applied to Wales until 31 March 2018 as after this date SDLT largely<sup>116</sup> ceased to apply to Wales; instead the devolved "Land Transaction Tax" took effect.

The Welsh legislation has no similar relief and an announcement<sup>117</sup> on 11 December 2017 by the Cabinet Secretary for Finance (about increasing the starting threshold for residential properties to £180,000) states that no first time buyers' relief is to be introduced.

The same relief does not apply to Scotland as SDLT ceased to apply to Scotland on 1 April 2015. However Land and Buildings Transaction Tax now has a first time buyers' relief for some purchases completed after 30 June 2018. It works by raising the zero tax threshold from £145K to £175K and so cannot give a saving of over £600.

Written by John Shallcross in December 2017 and updated in May 2018 and November 2018.

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 often the official view of HMRC on the correct analysis is not known. Advice should be sought before proceeding with any transaction.

---

<sup>116</sup> With very rare exceptions for contracts entered into on or before 17 December 2014.

<sup>117</sup> <http://gov.wales/about/cabinet/cabinetstatements/2017/ltratesandbands/?lang=en>









#### Offices in:

London  
Cardiff  
Reading  
Oxford  
Southampton

#### Contact us

 @BlakeMorganLLP  
 Blake Morgan LLP  
 Blake Morgan LLP  
 [blakemorgan.co.uk](http://blakemorgan.co.uk)

BLAKE   
MORGAN

The contents of this publication are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication. Authorised and regulated by the Solicitors Regulation Authority of England and Wales SRA number: 613716

December 2020 Public