

## Land and Buildings Transaction Tax – the 3% residential supplement



**Ann Stewart**

[ann.stewart@shepwedd.co.uk](mailto:ann.stewart@shepwedd.co.uk)

Scottish Government is to introduce a supplement to LBTT on residential transactions, where the purchase of a dwelling results in the buyer owning more than one dwelling, unless the purchase in question is of a dwelling that is to be the buyer's main residence and he has sold a previous main residence within 18 months prior to the purchase.

The supplement will consist of an additional 3% of the whole of the purchase price. In other words the buyer must pay LBTT at the prevailing rates at the time, and an additional 3% of the price. The supplement will however only apply to prices of £40,000 or over.

The supplement is principally designed to target those in the market for second or holiday homes and buy-to-let properties. The underlying policy reasons for this are to protect the first time buyer, by discouraging second home buyers, and thus allow more properties to be available for purchasers entering the market for the first time. A similar supplement is proposed for stamp duty land tax on residential properties in England and Wales. The supplement will apply from 1 April 2016.

If the contract for the purchase of the property was concluded before 28 January 2016, the supplement will not apply.

### When will the supplement apply?

Broadly, the supplement will be payable when a buyer purchases a dwelling, and at the end of the day on the date when that purchase settles, the buyer owns more than one dwelling. However, there is a "main residence replacement" exception: if the dwelling being purchased is to be the buyer's main residence, and he has previously sold his main residence, within the period of 18 months immediately prior to the purchase, the supplement will not apply.

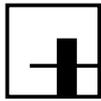
If however the dwelling being purchased is not to replace a main residence that has been sold, the supplement will be payable.

The rule that the supplement only applies where the buyer owns more than one property, only relates to individuals (i.e. natural persons) provided the purchase is not being made in the course of a business. If the buyer is a non-natural person, such as a company, then any purchase of a dwelling will attract the supplement. This is principally because a non-natural person cannot be said to have a "residence".

A purchase is considered to be made in the course of a business of the individual where the sole or main activity of the business is investing or dealing in chargeable interests in property.

"Owning more than one dwelling" will include other dwellings, no matter where in the world they are situated. So if the purchase concerned is not a replacement of a main residence, then the holiday home in Portugal will count towards the number of dwellings a person owns on the day of settlement.

Mixed use properties will also be affected: where there is a residential component, then a "just and reasonable" apportionment of the chargeable consideration will need to be made and the supplement will apply to that proportion.



### Timing of transactions

It is important to note that the main residence that is being replaced must be sold BEFORE the new main residence is acquired. Up to 18 months before the purchase is allowed for the sale of the previous main residence. If it is not, but is sold even a few days after the purchase, then the supplement will apply, but the buyer in that case is entitled to apply for a repayment of the supplement when the sale of his previous main residence settles, provided that happens not later than 18 months from the date of the purchase.

There is no period of grace, as such, in the arrangements, which seems unfair to someone who is only buying a new main residence and selling their previous one, but for reasons of convenience perhaps, decide to pay for the new house a few days before selling the old one. They may plan to have some work done to the new house before moving in, or for reasons outwith their control, the settlement of the sale is delayed by a few days. In those circumstances they will have to budget to pay the supplement even although they will quickly be able to claim repayment.

It is noted however that the guidance from Revenue Scotland (see below) indicates that, if the sale of the previous main residence is due to complete very shortly after the settlement of the purchase of the new main residence, there may be an option to hold off submitting the LBTT return until the sale has completed. Where the sale of the previous main residence settles before an LBTT return has been made for the new main residence purchase transaction, the supplement does not require to be paid and that return can be made on the basis that the supplement is not due on the transaction.

This must, of course be considered in the context of the requirement to register a buyer's title as quickly as possible (which requires an LBTT return to have been made) and the duty to the lender to register the security as quickly as possible. It may be an option for the buyer to weigh up the risks if no mortgage funding is being taken, but this is not something with which a buyer's solicitor can play fast and loose.

Depending on the sums involved, it might be cheaper to move into a hotel or rented accommodation for a couple of weeks, so that the sale can settle before, or simultaneously with, the purchase.

### When will the supplement not apply?

Where the main residence replacement exception applies, even if the buyer also already owns other property, such as a holiday home, prior to replacing the main residence, the supplement will not be payable. So a buyer could own several other houses, a holiday home and a handful of rental properties, perhaps, but these

won't count where the dwelling being purchased is a replacement main residence.

Conversely however, if a buyer owns other properties, but they are used for holidays or rented out, and then buys a new dwelling for use as his main residence, that purchase will attract the supplement, as there is no "main residence replacement".

### Relationship issues

It starts to become complicated when the buyer is more than one person. For a married or co-habiting couple, or civil partners selling the house they both own and occupy as their main residence and replacing it with a new main residence, the position is as for individual buyers. But there are many other permutations: an engaged couple who each own a property, whether as a rental property or their respective main residences, and decide to buy a new main residence together, the legislation provides that where, at the end of the day of the purchase transaction any of those buyers owns two or more dwellings, and the dwelling that is being purchased is not replacing one or more of the buyers' only or main residences, then the supplement will apply. The Guidance produced by Revenue Scotland (see below) is extremely helpful in providing examples of a variety of situations that help to clarify the effect of the legislation in these situations.

### Reliefs

If the transaction is of a type that benefits from existing LBTT exemptions and reliefs, those will continue to apply to transactions that involve the purchase of additional dwellings. Accordingly, a transaction which is exempt from LBTT, or has the benefit of 100% relief, will not be subject to the supplement.

### Purchases of multiple dwellings

The 2016 Act introduces one new relief for purchases of multiple dwellings. The Land and Buildings Transaction Tax (Scotland) 2013 provides relief where six or more separate dwellings are the subject of a single transaction that involves the transfer of a major interest in, or the grant of a lease over, them. In those circumstances, those dwellings are treated as not being residential property. Full relief from the supplement is available for any transaction falling into this category. So a transaction which is regarded as non-residential, because it involves the acquisition of 6 or more dwellings in one transaction, will not be subject to the supplement, if the relief is claimed.

### Guidance

Revenue Scotland has published comprehensive **Guidance** on the application of the supplement. All purchasers of residential property, and their advisers should consult this guidance, to check their liability to pay the supplement, and any entitlement to reclaim such payment.



### The supplement in context

Given the stated policy aim of the supplement to improve the availability of housing for first time buyers, it is disappointing that Scottish Government did not think to place a cap on liability for higher priced houses. An individual purchasing a house for £1.5 million, whether replacing their main residence or not, is unlikely to be preventing a first time buyer from bidding for that property. And yet that buyer may find themselves having to pay an extra 3% of that whole price, even if they were the only person interested in bidding.

Will the supplement affect prices being offered? Undoubtedly, if buyers are offering before they are assured of a sale. The additional outlay of 3% of the price will inevitably affect a purchaser's calculations in determining what to offer.

The Westminster and Holyrood governments must conduct research over time to ascertain whether the supplement achieves the desired policy outcome – of freeing up more property available to first time buyers. Many people considering a “home of their own” for the first time, are just as likely to be considering renting as an option, where the requirement to amass a significant deposit to be able to buy, can take years. The complex matrix that the supplement creates, in which buy-to-let is discouraged, could limit the availability of suitable rental property for those individuals, without the alternative of mortgage-backed buying available. Joined up thinking is definitely required!

For further information or advice on any of the issues discussed in this briefing note, please get in touch with your usual Shepherd and Wedderburn contact.