Stamp Duty Pitfalls For The Unwary

OVERVIEW

Since the introduction of the 3% stamp duty surcharge for the purchase of additional residential properties, it has become almost impossible for many ordinary buyers to compute the correct amount of stamp duty to pay when purchasing a property.

This is because there are now four different stamp duty regimes that apply to the purchase of residential properties, and the 3% surcharge in particular has wide application to many buyers who have no inkling that the surcharge could apply to them.

The 3% Surcharge

The 3% stamp duty surcharge applies to the purchase of an additional residential property, such as a second home and a buy-to-let property. The surcharge is an extra tax on top of the normal stamp duty that applies to the purchase of a residential property. Exemptions from the 3% surcharge include the purchase of:-

- A main home as a replacement for a previous main home;
- A property which is partly residential and partly non-residential such a shop with a flat above;
- A property worth less than £40,000; and
- A caravan, mobile home or houseboat.

The Replacement of Main Home Exemption

The 3% surcharge does not apply if the purchased home is a replacement for a previous main home. For the exemption to apply the acquired property must be occupied as the buyer's main home, and the buyer must have sold, or be selling, his previous main home. If a buyer has not sold his previous main home by the purchase date, then he has three further years to sell in order to qualify for the exemption (see point 2 below).

Stamp Duty Pitfalls

To illustrate the complexity of the stamp duty rules, we have highlighted below six pitfalls that will impose the 3% surcharge in unexpected situations.

1. Couples and Joint Purchasers Treated As One Buyer

Joint purchasers, married couples and couples in civil partnerships may inadvertently be subject to the new 3% surcharge when they jointly buy a new home. As an example, for a married couple the problem arises when one spouse already owns a property. This is because joint purchasers, including spouses, are treated as one buyer under the surcharge rules. Consequently, if one spouse retains an existing residential property, then this will cause their joint purchase of the new home to be subject to the 3% surcharge in its entirety. (Even the non-property owning spouse will be subject to the 3% surcharge on their portion of the new home). Unfortunately, this pitfall appears to be contrary to the Government's express intention of introducing the new 3% surcharge to assist first time buyers.

PROPERTY TAX GUIDE

Stamp Duty Land Tax

According to HMRC figures there were 173,430 UK residential property purchases in March 2016, compared to 91,290 in February and 70,690 in April. The huge increase in March was almost certainly caused by buyers rushing to complete their purchases before the introduction of the 3% stamp duty surcharge on 1 April 2016.

2. Overlapping Ownership

If there is an overlap between the purchase of a new home and the sale of a previous home, then the purchase of the new home will be subject to the 3% surcharge. This situation could occur where the buyer is involved in a chain of transactions and their sale then falls through, but the buyer decides to proceed with their purchase by using bridging finance.

In this situation the payment of the 3% surcharge may be recovered from HMRC later on provided that the old home is sold within three years. However, the buyer will still be required to pay the 3% surcharge to HMRC upfront, and this may prove difficult to fund at a time of stretched finances.

3. Parents Assisting Children

If a parent helps their child to buy their first home, and the mortgage company insists on the parent being named as one of the legal owners of the home on the title deed, the parent's existing ownership of their family home will cause the purchase of their child's new home to be subject to the 3% surcharge in full, even though this is the child's first home. Again this pitfall would appear to be contrary to the Government's intention of introducing the new 3% surcharge to assist first time buyers.

4. Moving For Work

Homeowners who move for work and rent out their family home will be liable for the 3% surcharge if they buy a new home in their new area. They can avoid the surcharge by selling their old home, but in many cases families will wish to retain their old home so that they can return there once the work assignment has finished. The 3% surcharge will even apply in this situation where the retained family home is located in another country, and the homeowner comes to work in the UK and buys a home here.

5. First Time Home Buyers With An Existing Property Investment

Many first time home buyers already own property investments such as buy-to-let properties in the UK and elsewhere. If this property investment is worth more than £40,000 then the first time buyer will suffer the 3% surcharge when buying their first home. The 3% surcharge even applies to the first home where the buyer owns a minority interest in a buy-to-let property worth more than £40,000 that is located overseas.

6. Purpose Built Holiday Homes

There are many UK holiday homes in purpose built developments that are subject to planning restrictions that prohibit their occupation for certain months of the year, normally in January and February. Even though these properties cannot practically constitute permanent homes, they are still treated as second homes that are subject to the 3% surcharge if the buyer already owns another property elsewhere, as is highly likely.

How Can Rawlinson & Hunter Help?

The increased complexity of the stamp duty rules means that many smaller firms of solicitors are now disclaiming responsibility for computing the stamp duty liabilities of their clients, and are instead recommending that buyers should seek specialist advice elsewhere.

Rawlinson & Hunter has the specialist stamp duty knowledge needed to advise buyers and conveyancing solicitors on how to steer clear of the various pitfalls, and to calculate the right amount of stamp duty. We can also advise on opportunities to reduce a buyer's stamp duty liability by utilising Government approved tax rules that are contained within the stamp duty legislation so that clients only pay the amount of tax intended by Parliament.

If you are interested in discussing stamp duty matters in more detail then please contact either Andrew Shilling or Karen Doe.

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