

What is a linked transaction?

A transaction is linked if it meets the definition detailed within section 108 Finance Act 2003 as follows:

108 *Linked transactions*

(1) *Transactions are linked if they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them.*

(2) *Where there are two or more linked transactions with the same effective date, the purchaser, or all of the purchasers if there is more than one, may make a single land transaction return as if all of those transactions that are notifiable were a single notifiable transaction.*

(3) *Where two or more purchasers make a single return in respect of linked transactions, section 103 (joint purchasers) applies as if—*

- (a) *the transactions in question were a single transaction, and*
- (b) *those purchasers were purchasers acting jointly.*

(4) *This section is subject to section 47(1) which means that "Exchanges" are not linked transactions.*

How does S108 work?

Linked transactions are those which form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them. If the transactions are linked all the purchase prices will be added together and treated as if it were one transaction with only one nil rate band.

Just because two transactions are between the same purchaser and vendor does not necessarily mean they are linked, especially if they have been negotiated separately and it is no more than a fortuitous coincidence that both are being purchased by the same purchaser or connected purchaser.

The transactions will be linked however if they are part of the same deal or arrangement. An example may be where the price of two parcels of land depend on each other so that if they were purchased separately

they would be a higher price, or that completion of one parcel relies on completion of the other, so that one cannot complete without the other. Documenting transactions with separate contracts will not prevent them being linked if the transactions are under arrangements which indicate they are part of a single deal.

Applying s108 to a series of transactions

Series of transactions means something more than that one transaction following the other. There must be something else to connect them. It would be a question of fact whether purchases are totally unrelated. In particular, the purchaser needs to consider whether the fact that the first transaction had happened had affected the terms of the second transaction. It is generally accepted by HMRC that in leasehold cases, if there is no right to renew at the end of a term, and a new lease is negotiated separately under different terms, the subsequent lease will not be linked to the first lease.

Applying s108 to residential transactions involving the 3% surcharge

It is more important than ever to consider s108 when purchasing residential property if the purchase consists of more than one dwelling. A purchase is either subject to surcharge or it is not, it cannot be a mixture of ordinary rates and surcharged rates. Consider the following example:

Mrs A does not own a residential property. She is minded to purchase two flats of equal value in a block of 10 flats. She intends to live in one and use the other to generate a source of rental income. If she buys the two flats as part of one deal, and they complete on the same day, the 3% surcharge will apply to both flats as they are linked transactions. If, however she completes on each flat on different days, although both are linked, the 3% surcharge will only apply to the purchase of the second, because on the date of completion of the first flat, Mrs A did not own any other property. A major saving is achieved by changing the dates of completion even though they are linked transactions.

If you need help or advice on any of these circumstances please get in touch.