

NOVEMBER TOPIC OF THE MONTH

Trustee purchase of residential property

A common question we get asked when the purchaser, or one of the purchaser's, is a trustee is whether or not the 3% surcharge applies to the purchase. The following two examples should explain things in a little more detail.

Discretionary trusts

Where the purchaser, either as the sole purchaser or as a joint purchaser with others, is acting as a trustee of a settlement, and that settlement does not entitle the beneficiary to occupy the residential property for life, or enjoy the income earned from the residential property for life, the 3% surcharge will apply to the purchase if the consideration is over £40,000 and is not subject to a reversionary lease with 21 years left to run. This is summarised by saying that the purchase of a residential property by a trustee of a discretionary trust is treated the same as if the purchaser was a company. Take the following example:

M and N are individuals acting as trustees for the X trust. Using trust funds, they purchase a dwelling. The X trust enables M and N to apply the income from the dwelling at their discretion amongst a class of beneficiaries. M and N in this case are liable to the higher rates if they meet the tests normally applied to companies. That is, if the chargeable consideration is £40,000 or more (Condition A) and is not reversionary on a longer than 21-year lease (Condition B) the higher rates will apply.

Bare trusts

Where the purchaser is acting as a bare trustee or nominee and that settlement entitles the beneficiary to occupy the residential property for life, or enjoy the

income earned from the residential property for life, the 3% surcharge will only apply to the purchase if the beneficiary owns another residential property. The beneficiary is treated as the purchaser and not the bare trustee or nominee. In essence, you need to consider the beneficiary's circumstances to establish if the purchase attracts the 3% surcharge. Take the following example:

J and K are individuals acting as trustees for the Z trust. Using trust funds, they purchase a dwelling. The Z trust entitles an individual beneficiary, L, to occupy the dwelling for life or entitles L to the income from the property. J and K must consider whether the higher rates would apply if L were purchasing the dwelling rather than them. So if L has another interest in a dwelling (Condition C) on the effective date and the purchase is not a replacement of L's main residence (Condition D) then the higher rates will apply, otherwise they will not.

Beneficiary's that are under 18 years old

It's important to note that where a beneficiary of a bare trust or life interest trust is under the age of 18, the parents of that beneficiary will be treated as owning that residential property for the purpose of establishing if the 3% surcharge applies. This means that if the parents of the child beneficiary own another residential property, the child is deemed to own another residential property, and so the 3% surcharge applies. The rules for establishing property ownership for couples that are not living together also applies to settlements. Different rules will apply to child beneficiaries for land transactions in Wales from 1 April 2018.

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

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