GRIFFITHSALLEN
Stamp Duty Advisers

HELPING YOU GET IT RIGHT

OCTOBER TOPIC OF THE MONTH

Three common myths about the 3% surcharge

Here are three of the most common mistakes we encounter when advising conveyancers about the 3% higher rate on their transaction.

Myth 1 - our client will only pay the 3% on one dwelling if they buy two dwellings in one transaction

Myth busted. Purchasing two dwellings in one transaction will attract the 3% surcharge on the entire purchase price in accordance with paragraph 5, Schedule 4ZA, Finance Act 2003 unless the price being paid for one of the dwellings is below £40,000 or one of them qualifies as a subsidiary dwelling. It does not matter if one of the two dwellings becomes a main residence or whether the purchaser owns any other dwellings. Take the following example:

> Mr & Mrs Jones sell their main residence for £750,000. They do not own any other residential property. They go on to purchase two flats in a block from a developer for £350,000 each as one transaction. They will live in one flat as their main residence and let the other flat as a source of income in their retirement.
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> The 3% surcharge will apply to the entire purchase price of £750,000, no apportionment is possible. A transaction is either subject to the 3% surcharge or it is not. The structure of the transaction needs to change if the purchasers want to mitigate the 3% surcharge.

Myth 2 - our client cannot claim Multiple Dwellings Relief (MDR) on a dwelling that was not subject to the 3% surcharge because it qualified as a subsidiary dwelling

Myth busted. MDR applies to a building or part of a building that is suitable for use as a dwelling in accordance with paragraph 7, Schedule 6B, Finance Act 2003. It does not matter that the dwelling has not attracted the 3% surcharge because it is subsidiary to the other in accordance with paragraph 5, Schedule 4ZA, Finance Act 2003. Take the following example:

> Aled does not own a residential property. He buys a house with an annexe for £400,000. The house and annexe each meet the statutory definition of a dwelling and so the 3% surcharge would (on the face of it) apply as Aled is buying two dwellings in one transaction.
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> After further enquiries it is established the annexe qualifies as a subsidiary dwelling and so the 3% surcharge is mitigated and the standard rates apply to the house and annexe. Making a claim for MDR is still possible and will further reduce the SDLT liability to £3,000. However the minimum that can be paid when MDR is claimed is 1% of the consideration. The SDLT liability is reduced from £10,000 to £4,000. It does not matter that the 3% surcharge was not levied on the annexe.

Myth 3 - our client can claim she is replacing her main residence when she moves out of rented accommodation and buys a dwelling that she will occupy as her main residence. She is replacing her rented dwelling with a purchased dwelling isn't she?

Myth busted. There must be a land transaction that constitutes the disposal of a major interest before (or within three years after) the purchase of the dwelling that she occupies as her main residence to claim the purchase is a replacement. This is in accordance with paragraphs 3(6) and (7), Schedule 4ZA, Finance Act 2003. Take the following example:

> Mary intends to shortly retire from the Armed Forces after living in barracks for 10 years. She owns two buy to let properties which she has accumulated over the last 20 years whilst moving around the country. She has lived in each of those at some point in the previous 20 years of service as her main residence, on a consecutive basis, but now intends to purchase a main residence for £350,000 moving out of barracks.
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> The 3% surcharge applies to this purchase of a new main residence because she has not previously disposed of a major interest in a dwelling that she has occupied as her main residence. Leaving barracks is irrelevant. If Mary however disposes of one of her buy to lets now and purchases the new main residence on or before 26 November 2018, the 3% surcharge will not apply. If she however purchases after this date, or purchases her new main residence first, and sells one of the buy to lets later, she will pay the 3% surcharge and it cannot be reclaimed. This is because she has not occupied the sold buy to let in the three years prior to the purchase. The three-year occupation rule does not apply if the buy to let is sold before the purchase of the new main residence which is purchased on or before 26 November 2018.

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

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