3.5.4 Exceptional circumstances

In response to the Covid-19 pandemic, a limited extension to the three-year time limit was introduced for individuals who purchased a new main residence after 1 January 2017, and this has subsequently been given wider application. An extension to the three-year limit may be permitted where HMRC are satisfied that the person:

- was prevented from disposing of his or her previous main residence within the three-year time limit due to exceptional circumstances that could not have been reasonably foreseen; and
- sold the previous main residence as soon as he or she reasonably could after ceasing to be so prevented.

HMRC guidance states that what amounts to exceptional circumstances is a matter of fact and degree and no pre-clearance facility is available, i.e. HMRC only consider whether circumstances are exceptional after the previous main residence is sold.

Detailed guidance, with examples of what qualifies as exceptional circumstances, is provided at SDLTM 09807. In particular, an inability to sell within the three-year time frame as a result of the Covid-19 pandemic or defective cladding are circumstances that may be regarded as exceptional (albeit very much dependent on the particular facts). A change of intention, shortage of funds, anticipating a loss (e.g. during a market downturn) or collapse of a chain will not be regarded as exceptional circumstances.

Law: FA 2003, Sch. 4ZA, para. 3(6), (7A)
Guidance: SDLTM 09807

What is main residence?

In most cases, identifying a purchaser's main residence will be straightforward. However, where an individual resides at more than one dwelling, all of the facts and circumstances must be considered so as to determine which residence is the main residence. Stamp Office guidance provides a non-exhaustive list:

- If the individual is married or in a civil partnership, where does the family spend its time?
- If the individual has children, where do they go to school?

- At which residence is the individual registered to vote?
- Where is the individual's place of work?
- How is each residence furnished?
- Which address is used for correspondence?
- Where is the individual registered with a doctor/dentist?
- At which address is the individual's car registered and insured?
- Which address is the main residence for council tax?

The facts must be considered in each case. There is no opportunity to elect a main residence for SDLT purposes and the CGT position is not determinative. To establish the requisite intention for a purchase to be a main residence, a person must demonstrate a degree of permanence and continuity.

Law: FA 2003, Sch. 4ZA, para. 3
Guidance: SDLTM 09812

3.5.5 Rates of SDLT for additional dwellings

The rates for additional dwellings, including those for non-UK resident purchasers, are as follows:

Purchase price/lease premium or transfer value	UK residents	Non-UK residents
Up to £250,000	3%	5%
£250,001 to £925,000	8%	10%
£925,001 to £1m	13%	15%
Over £1.5m	15%	17%

3.5.6 Subsidiary dwellings

As noted at **3.5.2** above, if a dwelling is potentially within the scope of the higher rates of SDLT, general principles are used to determine if a building is suitable for use as a dwelling or in the process of being constructed or adapted for such use.

In general, a purchase comprising more than one dwelling will be treated as subject to the higher rates; it is not possible for a transaction to comprise a combination of higher and standard rates of SDLT. On this basis, if a claim for multiple dwellings relief is

available (see **10.12**) the charge to SDLT on the mean consideration for the dwellings involved in the claim must be calculated using the higher residential rates. However, an exception is provided to allow the standard residential rates of SDLT to be applied where all but one of the dwellings purchased are subsidiary dwellings to a "replacement main residence" (Condition D), i.e. a main residence is being replaced with the new main residence comprising a main dwelling and a subsidiary dwelling or dwellings.

To qualify, the subsidiary dwelling (A) must be situated within the grounds of, or within the same building as, the main dwelling (B). A and B must be purchased in the same transaction (not linked transactions) and the amount of consideration attributable (on a just and reasonable basis) to B must be equal to or greater than two thirds of the total consideration for the transaction.

Where a principal dwelling is purchased and all the other dwellings purchased are subsidiary dwellings, the tests for whether the transaction is a higher-rates transaction are applied as if only one dwelling was purchased. If the purchase of dwelling B is a first property purchase or a replacement of a main residence, the higher rates will not apply.

Multiple dwellings relief (**10.12**) may still be claimed and applied at standard rates (subject to the conditions noted above), even when more than one of the separate dwellings is a subsidiary dwelling.

A considerable body of case law is developing (considered at **14.3**) as to when a property will be accepted as comprising one or more dwellings. The leading case is *Fiander* which requires application of an "objective observer test". A wide range of factors must be weighed in the balance, such as physical separation, privacy and independence, necessary relationships between occupants, the need to make hypothetical changes to a property, and more minor factors such as utility suppliers, postal addresses and council tax registration.

The SDLT manual lists out a number of matters that must be considered, but suggests that "it may be necessary to weigh up the factors to come to a balanced judgement". In addition, it is stated that "where there is uncertainty as to the number of dwellings within the property the decision as to how many will be determined by which outcome best reflects all the relevant facts".

Law: FA 2003, Sch. 4ZA, para. 5
Case: *Fiander and Brower v HMRC* [2021] UKUT 156
Guidance: SDLTM 00415, 09755

3.5.7 Joint purchasers, married couples and civil partners

Where a transaction is entered into by joint purchasers, the higher rates will apply if the transaction would be a higher-rates transaction for any of the purchasers considered individually. This rule applies regardless of the size of interest held and whether purchased as joint tenants or tenants in common. Consequently, if one joint purchaser already has a residential property worth more than £40,000, all of the joint owners will be subject to the higher rates if acquiring a new interest worth more than £40,000.

Married couples, and civil partners, are specifically regarded as one unit for the purposes of the higher rates if they are living together (or are so treated for the purposes of the *Income Tax Act*, i.e. if they are not separated under a deed of separation or court order or in circumstances where separation is likely to be permanent). As such, only one dwelling owned between spouses (or their child under 18) will trigger the higher rates on a new purchase, whether made individually or jointly.

Example 1

David owns a flat in London. David's husband Elton decides to buy a main residence in his sole name for him and David in Blackpool. The higher rates will apply to Elton's purchase as he is treated as one unit with David.

If a married couple are separated in circumstances that are likely to become permanent and one buys a property, the fact of the individual being married will not trigger the higher rate, i.e. in this circumstance the spouses are not treated as one unit.

A chargeable transaction is not a higher-rate transaction if:

- there is only one purchaser;
- there is only one seller; and
- on the effective date of the transaction the seller and purchaser are married or in a civil partnership and living together.

Example 2

Harry solely owns a matrimonial home and jointly holds a buy-to-let property with his wife Meghan. Harry and Meghan wish to borrow an additional £100,000, secured against the matrimonial home, to carry out improvement works to the buy-to-let property. The bank requires Meghan to be jointly liable for the mortgage and therefore a transfer of the matrimonial home into joint names is required.

On the basis that Harry and Meghan are married and living together this transfer is not subject to the higher-rates charge and therefore not subject to SDLT (being below the standard residential rate threshold for charge to SDLT).

Law: FA 2003, Sch. 4ZA, para. 9A