

Note to Members concerning 5% Rate of Stamp Duty Land Tax (“SDLT”)

In response to requests by some members for clarification of the circumstances where the new 5% rate of SDLT will apply we wrote the attached letter to HMRC and received the attached reply.

It seems clear that the legislation is aimed at normal purchases of dwellings by individuals but the broad definition of residential property in S116(1)(a) of the Finance Act 2003 can also catch developers that purchase property via

- The purchase of a garden of a dwelling
- The purchase of property where residential development has already begun
- The purchase of a dwelling for re-development whether via renovation or demolition followed by re-development

We would recommend that members take specific advice in circumstances where the purchase of property includes a dwelling.

Birmingham Stamp Office
SDLT Enquiries
9th Floor, City Centre House
30 Union Street
Birmingham
B2 4AR

19th April 2011

Dear Sirs

5% Rate of Stamp Duty Land Tax (“SDLT”)

We have received a number of enquiries from our members regarding the application of the new 5% rate of SDLT.

Our understanding is that the 5% rate only applies to residential property as defined by S116 of the Finance Act 2003 and thus, purchases of land by developers would only attract a maximum of 4% SDLT.

I would be grateful if you will confirm that our understanding is correct.

It would also be helpful if you can provide guidance as to the definition of the term “a building suitable for use as a dwelling” as it is not uncommon for our members to purchase property previously used as residential houses either to renovate or demolish prior to building new residential units. Often, these properties are not in use as dwellings at the date of purchase, but it would be useful to understand what level of disrepair is necessary for a previous dwelling to be considered “not suitable for use as a dwelling”

We would like to issue a written note to HBF members upon receipt of your response.

Thank you.

Yours faithfully

Michael Powell – Finance Director



31 MAY 2011

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Date 26 May 2011
Our ref BHM/B11/Apr232/LLS
Your ref

Dear Mr Powell,

5% Rate of Stamp Duty Land Tax

Thank you for your letter dated 19 April 2011.

I am only able to give general guidance, which may not apply to all transactions.

Section 116(1)(a) Finance Act 2003 defines residential property as a building that is:

- used as a dwelling,
- suitable for use as a dwelling, or
- in the process of being constructed or adapted for such use.

Section 116(1)(b) Finance Act 2003 defines residential property as land that is or forms part of the garden or grounds of a building within Section 116(1)(a), including any building or structure on such land.

Each transaction must be considered on its own merits; while land purchased by developers is often non-residential, it is not automatically so. For example, if a residential property is already in the process of being constructed on the land, Section 116 would apply and the transaction would be residential.

Where a property that was previously used as a dwelling is purchased to renovate or demolish, it is likely to be considered residential; although it is not in use as a dwelling at the date of purchase, its last use was residential and it still suitable for such use.

Unfortunately I cannot give a definition of the level of disrepair needed for a property to be considered non-residential. Each case should be considered on its own merits.

I am sorry that I cannot provide specific guidance for your members. However, HMRC has published guidance on the 5% rate and the meaning of residential property on our website www.hmrc.gov.uk/so. I have attached copies for your reference, which you may wish to pass on to your members.

Information is available in large print, audio and Braille formats.
Text Relay service prefix number – 18001

Director: Mike Norgrove



We have also circulated draft guidance to our major stakeholders which is due to be published once it has been fully considered. I have also attached a copy of this draft for your reference, but as consultation has not yet been completed please do not share it, or its contents, with anyone else. When it is agreed and published it will be available at the following web address:

<http://www.hmrc.gov.uk/so/technical.htm>

If your clients wish for further help in deciding if a specific transaction is residential, please advise them to write to us at the above address, providing as much information about the transaction as possible.

Yours faithfully



Laura Swann
Birmingham Stamp Office

Direct Dial 0121 616 4490

Stamp Duty Land Tax on residential transactions where chargeable consideration exceeds £1 million

On this page:

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Stamp Duty Land Tax when the 5 per cent rate applies – an overview

- Finance Act 2010 introduced a new 5 per cent rate of Stamp Duty Land Tax for residential property transactions where the chargeable consideration exceeds £1 million.
- The new rate applies to transactions where the effective date is on or after 6 April 2011.
- The existing 4 per cent rate will still apply to residential property transactions where the consideration is more than £500,000 and up to £1 million.
- Transitional arrangements apply to transactions where a contract was entered into before 25 March 2010 (Budget day) but is not completed before 6 April 2011. In most such cases the new rate will not apply.
- Non-residential and mixed use transactions are not affected.
- HM Revenue & Customs online calculators have been amended to reflect the new rate.

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What is treated as residential property

Residential property is property which is used, suitable for use or being adapted for use as a dwelling, together with certain land and buildings associated with the dwelling. There are detailed rules determining whether certain types of institutional accommodation count as a dwelling - follow the link below to read information in the Stamp Duty Land Tax manual.

[Read about residential property in the Stamp Duty Land Tax manual](#)

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Stamp Duty Land Tax transactions when the 5 per cent rate applies

The 5 per cent rate applies to the following transactions:

- transactions which consist wholly of residential property and where the chargeable consideration exceeds £1 million

- linked transactions which consist wholly of residential property where the aggregate chargeable consideration exceeds £1 million

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Stamp Duty Land Tax transactions when the 5 per cent rate does not apply

The following transactions are treated as non-residential for Stamp Duty Land Tax purposes so the 5 per cent rate does not apply:

- transactions which consist partly of residential and partly of non-residential property and where the chargeable consideration exceeds £1 million
- linked transactions which consist partly of residential and partly of non-residential property where the aggregate chargeable consideration exceeds £1 million
- single transactions comprising of six or more separate dwellings

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Contracts before 25 March 2010

Where a contract was entered into before 25 March 2010, the new rate will not apply if the contract is substantially performed before 6 April 2011, or it is completed after that date and, on or after 25 March 2010:

- the contract was not varied or the rights under it assigned • there was no exercise of any option, right of pre-emption or similar right
- there was no assignment, sub-sale or other transaction involving all or part of the subject-matter of the contract

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Budget 2010



BN24

24 March 2010

STAMP DUTY LAND TAX: RATES AND THRESHOLDS

Who is likely to be affected?

1. Purchasers of residential property at over £1 million.

General description of the measure

2. Legislation in Finance Bill 2010 will introduce a higher stamp duty land tax (SDLT) rate of 5 per cent for purchases of residential property where the consideration exceeds £1 million.

Operative date

3. The new higher rate will apply to residential purchases where the effective date (normally the date of completion) is on or after 6 April 2011.

Current law and proposed revisions

4. At present the highest SDLT rate of 4 per cent applies to purchases where the consideration exceeds £500,000. A measure will be included in Finance Bill 2010 to add a new rate of 5 per cent for transactions in residential property where the consideration for the transaction exceeds £1 million.

Further advice

5. If you have any questions about this change, please contact the Stamp Taxes Helpline on 0845 603 0135. Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk

[Newsroom Access key details](#)[Skip navigation](#)**SDLTM20070 - Reliefs: Disadvantaged areas relief**[Bottom of Page](#) [Menu](#) [Manual Contents](#) [Previous Page](#) [Next Page](#)**Definition of residential property FA03/S116**

FA03/S116 sets out the statutory definition of residential property for the purposes of disadvantaged areas relief. Residential property is (FA03/S116(1)(a)) a building that, at the date of the relevant transaction, is

- used as a dwelling,
- suitable for use as a dwelling, or
- in the process of being constructed or adapted for such use.

The definition includes (FA03/S116(1)(b)) land that is or forms part of the garden or grounds of a such building (including any building or structure on such land).

FA03/S116(2) specifies that buildings used for the following purposes are residential property:

- residential accommodation for school pupils;
- residential accommodation for students (other than a hall of residence);
- residential accommodation for members of the armed forces, or
- an institution which is the sole or main residence of at least 90% of its residents and is not excluded by FA03/S116(3) (see SDLTM 20071).

If a building meets any one of these separate tests it will be treated as residential property, as will any garden or grounds belonging to it or any interests or rights attaching to it.

"Garden or grounds" includes land which is needed for the reasonable enjoyment of the dwelling, having regard to the size and nature of the dwelling. HMRC will apply a similar test to that applied for the capital gains tax relief for main residences (section 222(3) Taxation of Chargeable Gains Act 1992).

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[Newsroom Access key details](#)[Skip navigation](#)**SDLTM20073 - Reliefs: Disadvantaged areas relief**[Bottom of Page](#) [Menu](#) [Manual Contents](#) [Previous Page](#) [Next Page](#)**Non-residential property FA03/S116**

FA03/S116(1) defines non-residential property, by exclusion, as any land which does not come within the definition of residential property at FA03/S116(1)(a) to (c).

FA03/S116(3) specifies that a building used for the following purposes is non-residential property:

- a residential home or other institution for children;
- a hall of residence for students in further or higher education;
- a home or other institution for persons in need of personal care due to old age, disability, past or present dependence on alcohol or drugs or past or present mental disorder;
- a hospital or hospice;
- a prison or similar establishment; or
- a hotel or inn or similar establishment.

In these cases, FA03/S116(4) precludes any potential residential use being considered

In addition, FA03/S116(7) provides that, where six or more separate dwellings are the subject of a single transaction, this is treated as a non-residential property transaction.

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The online system will not change until the beginning of July. During the switchover, online filing will not be available for a number of days, but it is planned to be up and running on 4 July.

Any returns that are partly completed and saved, but not submitted before the system is taken down, will be affected by the changes. When you access those returns again after the changes, click "check this return" to find any validation errors.

Further information

For the most up to date information check the Stamp taxes news page

Go to the Stamp taxes news page

Link to :www.hmrc.gov.uk/stampsnews

Introduction of the 5% rate for residential property

The draft guidance for this is given below

SDLTMxxxxx - 5% rate for chargeable consideration over £1,000,000 - residential property.

This rate applies for transactions where the effective date is on or after 6 April 2011. It is added to Table A within S55(2) FA03. If the transaction completes an unamended contract made before 25 March 2010, or was substantially performed before 6 April 2011, then the previous 4% rate will apply.

FA03/S116 sets out the statutory definition of residential property for SDLT purposes. Residential property is (FA03/S116(1)(a)) a building or (FA03/S116(6)) part of a building that, at the date of the relevant transaction, is one of the following:

- used as a dwelling
- suitable for use as a dwelling
- in the process of being constructed or adapted for such use

The definition includes (FA03/S116(1)(b)) land that is or forms part of the garden or grounds of a such building (including any building or structure on such land) and (FA03/S116(1)(c)) an interest in or right over land that subsists for the benefit of a building within (FA03/S116(1)(a)) or of land within (FA03/S116(1)(b)).

In most cases, the use of a room or area within a residence as an office will not cause it to fall into the mixed use category, as the room or area would still be suitable for use as a dwelling. Similarly, any indoor pool, gymnasium or similar feature, or an interest in a garage in a separate block, would still be residential as it contributes to the enjoyment of the residential premises. In all such cases the 5% rate would apply for a chargeable consideration in excess of £1,000,000.

FA03/S116(2) specifies that buildings used for the following purposes are residential property:

- residential accommodation for school pupils
- residential accommodation for students - other than a hall of residence
- residential accommodation for members of the armed forces,

- an institution which is the sole or main residence of at least 90% of its residents and is not excluded by FA03/S116(3)

If a building meets any one of these separate tests it will be treated as residential property, as will any garden or grounds belonging to it or any interests or rights attaching to it.

Where (FA03/S116(7)) six or more separate dwellings are the subject of a single transaction involving the transfer of a major interest in, or the grant of a lease over, them, those dwellings are not treated as residential property.

“Garden or grounds” includes land which is needed for the reasonable enjoyment of the dwelling, having regard to the size and nature of the dwelling. HMRC will apply a similar test to that applied for the capital gains tax relief for main residences (section 222(3) Taxation of Chargeable Gains Act 1992).

Example

P is buying a house for £2,000,000. One room is used as an office, but there have been no alterations made which would make it unsuitable for use as part of a residence.

Because that room is suitable for use as a dwelling (S116(1)(a)/FA03) the whole property is residential. Table A applies so the rate of tax is 5%

Example

P is buying an estate for £3,000,000. The estate contains a sawmill and wood yard which is run as a business. Because the property is not wholly residential, Table B applies and the rate of tax is 4%.

Example

P buys a large property which is in multiple occupation by students. He pays £1,200,000. By virtue of S116(2)(b) this is residential property so Table A applies and the rate of tax is 5%.

Example

P buys a hotel for £3,000,000. It had previously been a single dwelling and P intends to restore it as a family home.

Table B applies and the rate is 4%. S116(4) says that any building listed in 116(3) is not residential even if it is suitable for residential use.

Overpayments of tax due to a mistake in the return

Draft guidance for the new regime following changes in legislation.

SDLTM54000 – Procedure

Overpayment relief: commencement and time limits