HMRC - SDLTM09800 - Condition D - General

Condition D is that the purchased dwelling is not a replacement of the purchaser’s only or main residence [Para 3(5)].

The detailed rules vary slightly, depending on whether the `old` main residence is sold before or after buying the `new` main residence.

`Old` main residence sold

In this first situation Condition D will be met unless all of the following 5 conditions are met:

At the time of purchase of the new property, the purchaser intends to live in the new property as the purchaser’s only or main residence [Para 3(6) (a)]

In the three year period [the `three year rule`] preceding the purchase of the new property, the purchaser or the purchaser’s spouse or civil partner, must have disposed of a major interest in another dwelling (the “old property”) [Para 3(6) (b)].

Immediately after the disposal of the old property, neither the purchaser nor the purchaser’s spouse or civil partner had a major interest in the old property [Para 3(6) (ba)]

The purchaser must have lived in the old property as the purchaser’s only or main residence at some point in the three year period preceding the date of the purchase of the new property [Para 3(6) (c)] – the `three year rule`

At no point between selling the old property and buying the new property had the purchaser or the purchaser’s spouse or civil partner acquired a major interest in another dwelling with the intention of the purchaser living in it as the purchaser’s main or only residence [Para 3(6) (d)]

The purchaser’s spouse or civil partner are only taken into account if they are treated as `living together`.

`Old` main residence sold

In this second situation, Condition D will no longer be met if the following 4 conditions are met:

At the time of the purchase of the new property, the purchaser intended to live in the new property as the purchaser’s only or main residence [Para 3(7) (a)]

In the three year period following the purchase of the new property, the purchaser or the purchaser’s spouse or civil partner, disposes of a major interest in another dwelling (the “old property”) [Para 3(7) (b)]

Immediately after the disposal of the old property, neither the purchaser nor the purchaser’s spouse or civil partner had a major interest in the old property [Para 3(7) (ba)].

The purchaser must have lived in the old property as the purchaser’s only or main residence at some point in the three year period leading up to the date of the purchase of the new property [Para 3(7) (c)]

The purchaser’s spouse or civil partner are only taken into account if they are treated as `living together`.

Purchases before 22 November 2017

The rules were changed on 22 November 2017 [section 40 of, and Schedule 11 to, the Finance Act 2018].

Before 22 November 2017, it was unnecessary for the purchaser to have disposed of the whole of their major interest in the `sold dwelling.` A purchaser could have disposed of only part of their major interest and still not have met Condition D.

Only for disposals on or after 22 November 2017 is there a requirement that neither the purchaser, nor the purchaser’s spouse or civil partner, retained a major interest in the old property following the disposal.

Exception to the `three year rule`

The `three year rule` in the first situation [above] is ignored where the purchase of the `new` main residence occurs on or before 26 November 2018. See example 12 at SDLTM09810.

Renting while replacing a purchaser’s only or main residence

An assured shorthold tenancy taken between the sale of the old property and purchase of the new property will be ignored so long as the tenancy is not granted for a term of more than 7 years.

Definitions

`living together`

‘Living together` is defined by section 1011 of the Income Tax Act 2007.

A married couple or civil partners of each other are treated as living together unless

they are separated under an order of a Court,

or

they are separated by a formal deed of separation,

or

they are in fact separated in such circumstances that the separation is likely to be permanent.

`disposed of`

In general, the purchaser must have disposed of either the freehold of a previous main residence or a lease of their previous main residence which had a term of more than 7 years when it was granted.

The disposal of the previous main residence does not have to be by way of sale, although that is likely to be the case for most individuals. For example the property may have been gifted to someone else or transferred under a court order as part of a divorce settlement.

Leaving employer provided accommodation or a parental home does not count as a disposal of a major interest in a previous main residence for the purposes of Condition D.

Leaving an assured shorthold tenancy will not count as a disposal unless the tenancy was granted for a period of more than 7 years. Equally for Condition D, such a tenancy taken between the sale of the old property and purchase of the new property will be ignored so long as it is not granted for a term of more than 7 years.

`Para` references are to paragraphs in Schedule 4ZA of the Finance Act 2003.

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