

Additional Dwelling Supplement – an overview

11 May 2023

Housekeeping

- Today's session should run for around 45 minutes to an hour.
- There will be a Q&A at the end of the session. If you have questions, please pop these in the chat and we will aim to answer them in the Q&A.
- The presentation section of this session will be recorded and this will be available on our YouTube channel afterwards.
 - People's identities will not be shown on the recording.

Today's Speakers

- Mollie Johnson – Head of LBTT
- Rhona Maurage – LBTT Technical Lead

What this session will cover

- The ADS Review – SG consultation
- Litigation
- Common issues arising
- The new guidance
- Opportunity to ask questions

What is the ADS review looking at

- Timelines
- Inherited property
- Small shares
- Divorce or separation
- Joint buyers/economic unit provisions
- Local authorities

Example - ADS replacing Main Residence

- Pink and Orange are selling their main residence (House 1) and purchasing a new dwelling to use as their next MR.



- The purchase of their new dwelling happens on the same day as the sale of their PMR. At the end of the effective date, Pink and Orange own one dwelling, and so they will not pay the ADS.



Example - ADS not replacing Main Residence

- Yellow owns two dwellings House 1 is Yellow's main residence, but they also own a buy-to-let dwelling.



- Yellow sells House 1 in November and, on the same day, purchases a new dwelling (House 2), however, they do not intend to use House 2 as their NMR. They still own their buy-to-let dwelling. Although Yellow owns two dwellings at the end of the effective date and Yellow has replaced their PMR, they do not intend to live in House 2 as their only or main residence and so the ADS will apply.



Example – Replacement of PMR in the last 18 months

- In June, Red sells their MR (House 1). Red also owns a holiday home (House 2).



- Since the sale of their PMR, Red has been living in rented accommodation but still owns their holiday home.



- In February, Red purchases a dwelling (House 3) which they intend to use as their NMR. They move out of their rented accommodation. Red still owns a holiday home (House 2). At the end of the effective date, Red owns two dwellings, but as they are replacing their PMR by moving into a NMR (House 3) and the sale of House 1 took place in the previous 18 months, the ADS will not apply.



Repayment Conditions

- (a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),
- (b) that dwelling was the buyer's only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and
- (c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as the buyer's only or main residence.

Key litigation themes

- Repayment Condition A
 - New main residence sold = no repayment
 - Falling outwith the statutory timelines
 - Conversion of two properties into one = no repayment as no disposal
- Repayment Condition B
 - Falling outwith the statutory timelines including military service/working overseas
 - Interpretation of only or main residence
 - Joint buyers both needing to reside in the previous property as their only or main residence to meet repayment conditions
 - Joint buyers who separately own dwellings cannot meet the repayment conditions if one of them sells their PMR on the effective date and the other thereafter

Key litigation themes

- Repayment Condition C
 - The new main residence has not been occupied as the buyer's only or main residence.

Paragraph 8A

Paragraph 8A applies if there are only two buyers, and the buyers are spouses, civil partners or cohabitants, and are or will be jointly entitled to ownership of the dwelling that is or forms part of the subject-matter of the transaction. Two buyers are cohabitants if they live together as though married to one another.

If this is the case, Paragraph 8 changes to:

(a) within the period of 18 months beginning with the day after the effective date of the transaction, **either or both** of the buyers disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction),

(b) that dwelling was **both of the buyer's** only or main residence at any time during the period of 18 months ending with the effective date of the transaction, and

(c) the dwelling that was or formed part of the subject-matter of the transaction has been occupied as **both of the buyer's** only or main residence.

Paragraph 8/8A

The issue: one of the joint buyers did not reside in the PMR disposed of as their only or main residence.

Goudie & Sheldon and Revenue Scotland (2018)

Walter and Revenue Scotland (2019)

Ross and Revenue Scotland (2019)

Wallace & Hogg and Revenue Scotland (2019)

Doherty and Revenue Scotland (2019) – This case also confirmed that a main residence must be owned by at least one of the buyers and does not cover rented property

Crawford and Revenue Scotland (2022)

Paragraph 8A

Decisions:

- The intention was for the ADS legislation to be tightly drawn, that does not make it absurd, illogical or unreasonable
- Paragraph 8A is workable and the policy intention is plain that it should be restricted to the situation where both parties had lived in the previous residence
- The Tribunal is unable to consider arguments that the terms on which ADS may be reclaimed are unjust or unreasonable and the tribunal does not have the jurisdiction to consider any argument based on discrimination – the tribunal is confined to the powers conferred by statute
- Section 48 of the Act is a general provision in relation to application of the Act in regard to obligations and liabilities under the Act and it is not disapplied by paragraph 5 (Schedule 2A)

Paragraph 8A

Decisions:

- The policy objective of the 2017 Order was to ensure that where the title to the former main residence of a taxpayer is in the sole name of one of a married couple, civil partnership, or cohabitants who both lived in that property and the couple then jointly buy a new main residence prior to selling the then current main residence, then the ADS can be repaid and relief given
- It is plain that the Scottish Parliament intended that the additional relief offered by the amending legislation in 2016 and 2017 should be restricted to the situation where both parties had lived in the previous residence, and not just one of them had done so
- The criteria for liability to the ADS and repayment are different: paragraph 5 of Schedule 2A states that there will be a liability to ADS if only one of the buyers satisfies the conditions in paragraph 2(1)(c) and (d), ie owning more than one dwelling and is not replacing an only or main residence. If Parliament had wished to have mirrored that in regard to repayment then they would have provided for that to have extended to paragraph 8. It did not.

Amalgamation of two properties

The issue: Disposal does not include amalgamating/combining two properties into one single dwelling.

(a) within the period of 18 months beginning with the day after the effective date of the transaction, **the buyer disposes of the ownership of a dwelling** (other than one that was or formed part of the subject-matter of the chargeable transaction),

Decisions:

- Taking the dictionary meaning of dispose, the appellant did not dispose of ownership of a dwelling at the effective date, nor have they done so subsequently – neither act of consolidating the Council Tax registration or the title in the Land Register disposes of ownership of the dwelling
- On any analysis, Paragraph 8(1)(a) had not been met as the dwelling would have formed part of the subject matter of the chargeable transaction as Number 8 would have formed part of number 8B
- Paragraph 8(1) is not ambiguous – the purpose of the provision is not directed to this situation

Clark and Revenue Scotland (2018)

Timelines

The issue: The timelines provided for at Schedule 2A cannot be extended.

Whether the ADS is due: (a) **during the period of 18 months** ending with the effective date of the transaction, the buyer has disposed of the ownership of a dwelling,

Whether the ADS can be repaid: (a) **within the period of 18 months** beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (other than one that was or formed part of the subject-matter of the chargeable transaction)

Timelines

Decisions:

- The jurisdiction of the Tribunal is limited and has only that jurisdiction which has been conferred on it by statute – it cannot decide that legislation should not be applied because it is thought to be flawed
- When the legislation was drafted, and subsequently amended, it was the clear intention of the Scottish Parliament to offer a window of 18 months and it is inflexible
- Only the Scottish Parliament can alter the terms of the legislation

Hunter and Revenue Scotland (2019)

Christie and Revenue Scotland (2021)

Yuill and Revenue Scotland (2022)

Tavendale and Revenue Scotland (2023)

New main residence disposed of

The issue: The dwelling disposed of at Paragraph 8(1)(a) must be one other than the one that formed part of the subject-matter of the transaction i.e. the NMR.

(a) within the period of 18 months beginning with the day after the effective date of the transaction, the buyer disposes of the ownership of a dwelling (**other than one that was or formed part of the subject-matter of the chargeable transaction**),

New main residence disposed of

Decision:

- All three conditions at Paragraph 8(1) must be met for the ADS to be repayable and, as they were not in this case, the ADS is not repayable
- The Tribunal has no discretion and must apply the law as it has been enacted and does not have jurisdiction to consider fairness
- In these circumstances, Paragraph 8(1)(b) can also not be met as it would have been impossible to do so (residing in the property disposed of as a PMR)

Chumas and Revenue Scotland (2019)

Yard and Revenue Scotland (2020)

Macdonald and Revenue Scotland (2020)

Robertson and Revenue Scotland (2022)

Only or main residence

The issue: The property disposed of must have been the buyer's only or main residence at any time during the period of 18 months ending with the effective date of the transaction.

(b) that dwelling **was the buyer's only or main residence** at any time during the period of 18 months ending with the effective date of the transaction, and

Only or main residence

Decisions:

- It was Scottish Parliament's intention that the ADS is only repayable in the limited circumstances set out in Paragraph 8(1) and the appellant does not fit within those
- Military service and employment are not protected characteristics under the Equality Act 2010
- Paragraph 8 is written in plain and unambiguous terms and there are no exceptions for military personnel
- The Tribunal cannot take into account whether or not it considers the law with which it is dealing to be fair or not.

Christie and Revenue Scotland (2022)

Mohammed and Revenue Scotland (2022)

Pattison and Revenue Scotland (2022)

NMR occupied as only or main residence

The issue: the NMR has not been resided in as their only or main residence.

(c) the dwelling that was or formed part of the subject-matter of the transaction **has been occupied as the buyer's only or main residence.**

Decision:

- The problem in this appeal is quite simply that, although Covid-19 was responsible for the delay in both selling the First Property and renovating the Second Property, the appellant has never lived in the Second Property as her only or main residence. Indeed she has never lived there at all.
- As can be seen from the Appendix, paragraph 8 of Schedule 2A makes it explicit that repayment is only possible where the property in question has been the only or main residence.
- This Tribunal must apply the law... we cannot ignore the clear words of the statute.
- There are no provisions in the legislation for considering extenuating or special circumstances or a reasonable excuse in this scenario.
- The Tribunal does not have jurisdiction to consider fairness.

Meng Choo Tan and Revenue Scotland (2022)

Other common issues arising

- Inherited properties with a share value of less than £40k = still counts as a dwelling for determining if the ADS is due if the whole property is worth over £40k
- A previous marital home is counted as a dwelling for the purposes of paying the ADS even if you no longer reside there
- Purchasing of two properties and amalgamating them – the ADS will be due and the repayment conditions can only be met if the NMR has been resided in as the only or main residence

The new guidance

[The Additional Dwelling Supplement \(ADS\) | Revenue Scotland](#)

[The Additional Dwelling Supplement \(ADS\) technical guidance | Revenue Scotland](#)

The Legislation

- Introduction of the ADS: [Land and Buildings Transaction Tax \(Amendment\) \(Scotland\) Act 2016 \(legislation.gov.uk\)](#)
- Introduction of Paragraph 8A and 9A: [The Land and Buildings Transaction Tax \(Additional Amount-Second Homes Main Residence Relief\) \(Scotland\) Order 2017 \(legislation.gov.uk\)](#)
- Retrospective effect of the 2017 Order: [Land and Buildings Transaction Tax \(Relief from Additional Amount\) \(Scotland\) Act 2018 \(legislation.gov.uk\)](#)

Q&A Section



Question 1

- Can you please clarify the position on 'granny flats' 'summerhouses' and annexes? Who is responsible for identifying/classifying these as additional dwellings? Is the buyers intention sufficient enough to decide that they do not intend to use separately; or, is it outwith their hands.

Question 2

- Can you please clarify the ADS position on the transfer of residential properties from a partnership to a limited company. For example, if less than 6 residential properties are transferred from a partnership to a limited company and the Sum of Lower Proportions ("SLP") applies such that the market consideration is reduced to £Nil (i.e. $MV * (100-100)$) thereby reducing the core LBTT charge to £Nil, is it correct that the ADS is also reduced to £Nil? It is expected that this would only be relevant where less than 6 residential properties are being transferred between connected parties given that once 6 or more properties are transferred, in a single transaction, these would be subject to LBTT at non-residential rates (even if the SLP applies).

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