

## Briefing document

### Stamp Duty Land Tax: Non-UK resident surcharge

#### Introduction

HMRC and HM Treasury have now published their response to the [consultation](#) which had sought views on the design of a Stamp Duty Land Tax (SDLT) surcharge on non-UK residents purchasing residential property in England and Northern Ireland. This measure was announced at Budget 2018. The consultation ran from 11 February 2019 to 6 May 2019.

Spring Budget 2020 confirmed that the rate of the surcharge will be 2% and that it will come into effect from 1 April 2021. [Draft legislation](#) has also now been released for consultation until 12 September 2020. The surcharge applies to SDLT only for the time being, so will not apply to acquisitions of property in Scotland or Wales.

The surcharge will apply to the whole of the purchase price by adding the additional 2% to each of the existing residential SDLT rates and will also apply to increase the rate of SDLT paid by reference to the rent payable under a lease of residential property of more than 21 years, as well as on any premium.

#### Overview

The introduction of the non-resident surcharge will coincide with the end of the temporary reduced residential rates, which came into effect on 8 July 2020 and is in place until 31 March 2021. This will mean there will be a significant increase in SDLT costs at midnight on 31 March 2021.

This is illustrated by looking at the amount of SDLT due on transaction values shown below:

SDLT on residential property until 31 March 2021		
Property price	Basic charge	Higher charge on buy-to-let or second homes
£248,000	£0.00	£7,440.00
£485,000	£0.00	£14,550.00
£750,000	£12,500.00	£35,000.00
£2,000,000	£138,750.00	£198,750.00

And then comparing that with SDLT which would be due on the same transactions from 1 April 2021:

SDLT on residential property from 1 April 2021			
Property price	Basic charge	Higher charge on buy-to-let or second homes	Non-resident surcharge
£248,000	£2,460.00	£9,900.00	£14,860.00
£485,000	£14,250.00	£28,800.00	£38,500.00
£750,000	£27,500.00	£50,000.00	£65,000.00
£2,000,000	£153,750.00	£213,750.00	£253,750.00

For a non-resident buyer, the SDLT on an average value house or flat in England (£248,000) roughly doubles (from £7,440 to £14,860) and that on an average property in London (£485,000) increases by about 150% (from £14,550 to £38,500). The increment in SDLT for a non-resident buyer of homes worth £750,000 and £2,000,000 is £30,000 and £55,000 respectively. Such a buyer may potentially reduce their SDLT cost but only if they are coming to live in the UK.

### **Scope of the new surcharge**

The surcharge will apply to acquisitions by non-residents of major interests in dwellings, which are not short leases (or subject to long leases). It will generally not apply to mixed-use property or to the acquisition of six or more dwellings in one transaction, which will continue to count as commercial. Multiple Dwellings Relief (MDR) will continue to be available for purchases of two or more dwellings purchased in single or linked transactions but this may be infrequently claimed by non-resident purchasers. This is because the minimum rate under MDR will now be 5%, which is no better than the current commercial rates.

### **Joint purchasers**

Where property is purchased jointly, if any of those purchasers is non-resident, the surcharge will apply to the whole acquisition. There will be an exception to this rule in respect of a joint purchase made by a married couple, or by civil partners, where one of the parties to the transaction is not treated as being UK resident for the purposes of the surcharge. The only other exception to this is for charities buying as tenants in common.

### **Acquisitions by individuals**

An individual will be treated as 'non-UK resident' for the purposes of the surcharge if they spend fewer than 183 days in the UK in any continuous period of 365 days beginning 12 months before the transaction occurs and ending 12 months after the transaction occurs. A person will be deemed to have spent a day in the UK if they are here at the end of a day (midnight). This test will look at the total amount of days spent in the UK, not just in England or Northern Ireland.

Where an individual, who has been subject to the surcharge, spends 183 days or more in the UK in any continuous period of 365 days beginning 12 months before the transaction and ending 12 months after the effective date of the transaction, they will be eligible for a refund of the surcharge. This means that employees returning from secondment abroad or people taking up employment in the UK might have to pay the surcharge initially (even if they are first time buyers) but may then be able to reclaim the surcharge once they satisfy the 183 day test.

Relief from charge will be available for all those non-UK residents who are Crown employees subject to UK income tax (e.g. for members of the armed forces, diplomats and civil servants on overseas postings if they are purchasing residential property in England and Northern Ireland). No other specific reliefs or exemptions are proposed for individuals.

### **Acquisitions by non-resident persons other than individuals**

The surcharge will also apply to acquisitions by non-resident persons other than individuals, including companies, partnerships and trusts (subject to the rules below).

#### **Companies**

A company residence test based upon Chapter 3 of Part 2 of the Corporation Tax Act 2009 will apply. Broadly, this means that companies will be resident in the UK for the purpose of the surcharge if:

- They are incorporated in the UK; or
- At the time they acquire residential property, their central management and control is exercised in the UK.

UK resident close companies will also be within the scope of the additional 2% rate if they are controlled by non-UK resident persons.

#### **Partnerships**

In respect of partnerships, the surcharge will apply if any one of the partners is non-UK resident.

#### **Trusts**

In respect of trusts, the existing residence tests for income tax and capital gains tax will not be used as had originally been proposed. In most cases, bare trusts will be transparent, so the underlying beneficial purchaser of the property will determine the SDLT position. Broadly, the additional 2% rate will apply to trusts that are not bare trusts if:

- A non-UK resident beneficiary has an interest in possession in the trust which gives them a right to occupy or receive income from the property; or
- If there is no such beneficiary, if the trust is non-UK resident for SDLT purposes. The residence status of the trustees will be relevant and determined using the relevant SDLT residence test (depending on whether the trustee is an individual or company). Where there are multiple trustees, the trust will be UK resident only if all the trustees are UK resident under the SDLT tests.

Unit trusts will almost always be non-UK resident and so subject to the surcharge because they will typically have two non-resident corporate trustees.

Refunds will not be available to non-natural persons except in respect of alternative property financing agreements and certain trust arrangements.

### **Transitional provisions**

The surcharge will not apply to transactions which are currently in progress provided that contracts have been exchanged on or before 10 March 2020. Usual exceptions will apply such that a charge will arise if the contract is, for example, varied or assigned or a sub-sale transaction is entered into after 11 March 2020. The surcharge will also not generally apply where contracts are substantially performed on 31 March 2021 or earlier but do not complete until 1 April 2021 or later.

### **Find out more...**

This note reflects the law as proposed in the draft legislation released on 21 July 2020. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Jonathan Evans ([jonatevans@deloitte.co.uk](mailto:jonatevans@deloitte.co.uk)) or Jennifer Doyle ([jenniferdoyle@deloitte.co.uk](mailto:jenniferdoyle@deloitte.co.uk)).

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