

Stamp Duty Land Tax: non-UK resident surcharge consultation

February 2019

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ISBN 978-1-912809-36-3

PU2322

Preface

Subject of this Consultation: The government announced at Budget 2018 that it would consult on a 1% Stamp Duty Land Tax (SDLT) surcharge on non-UK residents purchasing residential property in England and Northern Ireland.

Scope of this Consultation: The government will introduce, in a future Finance Bill, a SDLT surcharge on non-UK residents purchasing residential properties in England and Northern Ireland. The non-UK resident surcharge will apply to purchases of residential property made by non-UK resident individuals and certain non-natural persons. The surcharge will apply to freehold and leasehold purchases of residential property and will be at a rate of 1% on top of existing SDLT rates, including the rates applicable to the rental element of leasehold property.

Who should read this: The government welcomes comments from individuals, companies, advisers, representative bodies and others who would be affected by these changes.

Duration: This consultation will last for 12 weeks until 6 May.

Lead officials: Reshma Prajapat, Business and International Tax, HM Treasury and Neil Zammit (CS&TD Business, Assets & International) HMRC

How to respond to or enquire about this consultation: Responses, requests for hard copies, and general queries about the content or scope of this consultation can be sent by email to as Non-residentSDLTsurchargeconsultation@hmtreasury.gov.uk, or by post to:

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Contact details

The joint controllers for you any personal data collected as part of this consultation are HM Treasury and HM Revenue & Customs, the contact details for which are:

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Executive summary

The government is committed to helping more people into home ownership. The primary way to stabilise and improve affordability in the long term is to build more homes in the right places. The government has made good progress and is on track to raise housing supply by the end of this Parliament to its highest level since 1970 and to 300,000 per year on average by the mid-2020s. However, the government recognise that further action is needed to help people get onto the housing ladder now.

Action has already been taken by the government to support homeownership by making changes to Stamp Duty Land Tax (SDLT) including:

- the introduction in April 2016 of the higher rates of SDLT on additional dwellings (referred to as 'the higher rates'), and
- the introduction of first time buyers' relief at Autumn Budget 2017.

But there is evidence that purchases of property by non-UK residents is pushing up house prices for UK residents.

That is why at Budget 2018 the government announced it would consult on the introduction of an SDLT surcharge on non-UK residents purchasing residential properties in England and Northern Ireland. The surcharge will apply to purchases of residential property made by non-UK resident individuals and non-natural persons including companies, trusts and partnerships. The surcharge will apply to freehold and leasehold purchases and will be at a rate of 1% on top of existing SDLT rates, including the rates applicable to the rental element of leasehold property. It will apply to purchases of residential property which for the purposes of this charge means dwellings.

The government believes that introducing an SDLT surcharge of 1% on non-UK resident purchasers of residential property in England and Northern Ireland will help to control house price inflation, thereby assisting residents in getting onto the housing ladder in line with the government's wider objectives on homeownership. However, there will be reliefs from and refunds of the surcharge in certain circumstances where the government considers imposing a tax charge is not in line with the overall policy intention.

The government welcomes views from any affected individuals, advisers, trustees, companies and another entities, either based in the UK or abroad, on the proposed surcharge.

Chapter 1

Introduction

- 1.1 Stamp Duty Land Tax (SDLT) is a transaction tax payable by a purchaser of property or land above a certain value in England and Northern Ireland. There are separate rates for residential and non-residential property, and different sets of rules depending on the circumstances of the purchaser.
- 1.2 At Budget 2018, the government announced plans to consult on a new 1% SDLT surcharge on non-UK residents buying residential property in England and Northern Ireland.
- 1.3 In designing the non-resident SDLT surcharge (hereafter referred to as “the surcharge”) the government has been guided by two key principles:
 - firstly, that the surcharge will apply on top of existing SDLT rates and as far as possible rely on rules currently found elsewhere in SDLT and the wider tax system.
 - secondly, in recognition that not all those who interact with SDLT are tax professionals, the surcharge for individuals will use rules which are as simple as possible to understand and apply. For purchasers other than individuals, who might be expected to use tax professional advisers such as companies and trusts, the government proposes relying on existing concepts in the tax system which should already be familiar.
- 1.4 This consultation includes 7 chapters; Chapter 2 covers the residence test that will apply for individuals; Chapter 3 addresses the residency test for non-natural persons; Chapter 4 deals with reliefs and refunds from the surcharge; Chapter 5 discusses the interaction between the surcharge and existing SDLT reliefs; Chapter 6 details the interaction of the surcharge with the various other rules which exist within SDLT and Chapter 7 covers compliance and administration of the surcharge.
- 1.5 Also included in this consultation is a short survey (Annex A) which aims to provide the government with information on the potential impact on the market of the surcharge and how purchasers may change their behaviour in response to it. The government would be grateful if those responding to the consultation could also complete the survey. A further annex (Annex B) is provided to illustrate the proposed SDLT rates structure for those within and outside the scope of the surcharge.
- 1.6 This consultation will run until 6 May. Following that date, the government will carefully consider all the responses it has received. The surcharge will be legislated for in a future Finance Bill.

Chapter 2

The surcharge for individuals purchasing residential property in England and Northern Ireland

The rates to which the surcharge will apply

- 2.1 The amount of SDLT paid by individuals in the UK on residential property depends not only on the property's value but also on the purchaser's circumstances and the type of property. Further details of the existing SDLT rates for individuals can be found at Annex B.
- 2.2 In line with the first principle of the surcharge outlined in Chapter 1, the surcharge will apply to non-UK resident individuals who purchase residential property in England and Northern Ireland. It will apply on top of the relevant SDLT rates paid by individuals, including the standard rates, the rates for the rental element of leasehold purchases, the rates for those purchasing additional dwellings, and the rates paid by those who benefit from first-time buyers' relief.

The residence test for individuals

- 2.3 The government is proposing to treat individuals as non-UK resident for the purposes of the surcharge if they spent fewer than 183 days in the UK in the 12 months ending with the date the transaction occurs.¹
- 2.4 A person will be deemed to have spent a day in the UK if they are here at the end of a day (midnight). Although SDLT is only payable on property or land purchased in England and Northern Ireland, for the purposes of the SDLT residence test it is days spent in the whole of the UK that will be relevant, not just days spent in England or Northern Ireland.
- 2.5 The government proposes that where an individual who has been subject to the surcharge spends 183 days or more in the UK in the 12 months following the effective date of the transaction, they will be eligible for a refund of the surcharge. Details of this refund, and of reliefs from the surcharge, are given in Chapter 4.
- 2.6 There are special rules where there are joint purchasers of a property. These rules are detailed in Chapter 6.
- 2.7 The proposed residence test for individuals is intended to be as simple as possible for taxpayers and conveyancing solicitors to apply, in recognition of

¹ This is normally referred to as "effective date of the transaction" for SDLT purposes

the fact that most people buying homes will not use a professional tax adviser.

- 2.8 The government considered several alternative tests for what constitutes a non-UK resident individual for the surcharge. One option was to use the existing Statutory Residence Test (SRT). However, the SRT is a complex piece of legislation, involving several interconnected tests which consider closeness of connection to the UK as well as periods of time spent in and out of the UK. Moreover, the SRT time-based tests determine the residence status of an individual by reference to periods spent in the UK over the course of a tax year. The nature of SDLT as a tax which falls upon the completion of a transaction means the SRT, without adaptation, would be poorly suited to be applied to SDLT for which the concept of "tax year" is not relevant. The government decided against using the SRT for the reasons set out above, as using the SRT would not be compatible with the principle of making this surcharge as simple to apply as possible.

Example 1

John purchases a freehold residential property in England on 1 August 2025 for £500,000. John is neither a first-time buyer, nor does he already own another property so first-time buyers' relief and the higher rates on additional dwellings do not apply to him.

Between 2 August 2024 and 1 August 2025 John spent 275 days outside the UK. He is therefore classed as non-UK resident according to the test set out above and the surcharge applies.

His SDLT liability is therefore calculated as follows:

- 1% up to £125,000 = £1,250
- 3% of £125,000 to £250,000 = £3,750
- 6% of £250,000 to £500,000 = £15,000

His total SDLT liability is therefore £20,000.

If John spends 183 days or more in the UK in the 12 months following 1 August 2025, he will be eligible for a refund of the surcharge. Chapter 4 sets out the government's proposed approach to refunds.

- 2.9 At Budget 2018, the government announced plans to consult on a new 1% SDLT surcharge on non-UK residents buying residential property in England and Northern Ireland. The government is committed to the UK remaining an open and dynamic economy, but in line with our objectives on homeownership, the government believes that introducing a non-resident SDLT surcharge on residential property will help to ensure those resident in the UK can get on the housing ladder. We believe that 1% strikes the right balance between these objectives.

Question 1: Do you have any views on the proposed SDLT residence test for non- UK resident individuals?

Question 2: Would you prefer to see a different residence test applied? If so, what test and why?

Question 3: How will the proposed surcharge on residential properties affect purchase decisions of non-UK resident individuals in England and Northern Ireland?

Question 4: Do you agree that a rate of 1% for the surcharge is set at the right level to balance between the government's objectives on home ownership and the UK remaining an open and dynamic economy?

Chapter 3

The surcharge on non-natural persons purchasing residential property in England and Northern Ireland

- 3.1 The surcharge will also apply to non-natural persons purchasing residential property in England and Northern Ireland.
- 3.2 This chapter explains how the government will determine residence for SDLT purposes for companies, partnerships and trusts and how the surcharge will apply for entities which are non-UK resident according to those tests.

Chapter 3A: Companies

- 3.3 A company acquiring property is liable to pay SDLT on the transaction. It is a person distinct from its members and officers. Furthermore, certain types of entities and arrangements which may be otherwise transparent are treated as if they were companies for SDLT. This includes Unit Trust Schemes and contractual schemes (such as UK co-ownership contractual schemes and their foreign equivalents).

Company Residence

- 3.4 The surcharge will apply to non-UK resident companies and certain UK resident close companies purchasing residential property in England and Northern Ireland. The proposed liability of UK-resident close companies to the surcharge is described from paragraph 3.11 below. The surcharge will not apply to UK-resident non-close companies.
- 3.5 At present, there is no concept of corporate residence within the SDLT statute, so the government proposes introducing a company residence test to determine liability to the surcharge.
- 3.6 In order to distinguish between UK and non-UK resident companies, the government proposes a residence test based upon Chapter 3 of Part 2 of the Corporation Tax Act 2009. 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.

- 3.7 These rules already apply to companies, are long standing, and will be familiar to persons who control and run companies as well as professional advisers such as solicitors, accountants and tax practitioners.
- 3.8 For those entities treated as companies for SDLT purposes, separate rules will be required because they are not incorporated:
- where the entity is a Unit Trust, residence will be based upon the residence principles as related to trusts set out in Chapter 3C below.
 - where the entity is a contractual scheme, the scheme will be treated as non-UK resident if it is constituted by arrangements that create rights in the nature of co-ownership where the arrangements take effect as a result of the law of a territory outside of the UK.
- 3.9 If the company is not UK resident under this test, it will be treated as a non-UK resident purchaser and will be liable to the surcharge.

Question 5: Do you have any views on the proposed company residence test for the surcharge?

Question 6: Would you prefer to see a different residence test applied? If so, what test and why?

UK resident companies with non-UK resident participators

- 3.10 Non-UK residents may acquire property using UK resident companies, allowing them to indirectly enjoy the economic benefits of property ownership. Without any additional rules, where non-UK resident individuals use a UK-resident company to purchase a dwelling the surcharge would not apply.
- 3.11 To ensure consistency of treatment between non-UK residents acquiring property directly and those acquiring through UK-resident companies, the government proposes applying an additional test to UK-resident close companies taking their underlying ownership into account.
- 3.12 We therefore propose that a UK resident company will be liable to the surcharge if, at the point it acquires residential property, it is a close company under the direct or indirect control of one or more non-UK resident persons.
- 3.13 This test will not apply to non-close companies or to those entities treated as companies for SDLT purposes such as Unit Trusts and co-ownership authorised contractual schemes.
- 3.14 A close company is defined under section 439 of the Corporation Taxes Act 2010 (CTA 2010). Full guidance on the test can be found within the HMRC Company Taxation Manual at CTM 60000 onwards.¹ Generally, a company will be close if:

¹ <https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm60000>

- it is under the control of 5 or fewer participators, or any number of participators who are also directors, or
 - 5 or fewer participators or any number of participators who are also directors are entitled to the greater part of the assets upon a winding up of the company.
- 3.15 The close company test is long established and companies are already required to engage with the test to establish whether a tax charge arises in respect of loans made to participators and/or benefits conferred on participators.
- 3.16 Where the company is close and control (based on the test at section 450 CTA 2010) can be exercised by one or more non-UK resident persons, the surcharge will apply. In practice, we expect control to be exercised:
- directly by participators
 - indirectly via rights and entitlements held by others, or
 - by exercising general control
- 3.17 The residency status of the participators will be determined as if they were direct purchasers of the property acquired by the close company using the residence tests proposed for the surcharge. For example, if the participator is an individual, the residence test set out in Chapter 2 would apply. Similarly, where the rights and entitlements are held on Trust, the residence status of the trust for the purposes of the surcharge will be determined where appropriate using the proposed rules as detailed later in this chapter.
- 3.18 For the purposes of the close company test as it currently applies for Corporation Tax, there are a number of companies which are treated as non-close. These are listed at S442 to 447 CTA 2010:
- non-UK resident companies
 - registered societies
 - building societies
 - companies controlled by or on behalf of the Crown
 - companies involved with non-close companies
 - companies holding shares on Trust for a registered pension scheme
 - particular types of quoted companies
- 3.19 The government is considering whether these companies should also be treated as non-close for the purposes of the surcharge.
- 3.20 Further examples of the Close Company Rules can be found in the HMRC Company Taxation Manual at CTM604202.²

² <https://www.gov.uk/hmrc-internal-manuals/company-taxation-manual/ctm60420>

- 3.21 The government considered other options for the additional test dealing with the purchase of residential property using UK companies, but is not proposing them for the reasons set out below.
- 3.22 The government considered applying a fully transparent regime which looked at the underlying residency of the ultimate natural persons with shareholdings in all companies whether close or not. However, this was considered too onerous and impractical for all companies to comply with.
- 3.23 The government also considered using the register of Persons with Significant Control as the basis of a test for establishing whether a company was under the control of non-UK residents.³ However, this was found to be impractical particularly in relation to subsidiary companies.

The 15% rate of SDLT

- 3.24 When a company acquires a residential property, it will normally be required to pay the higher rates on its purchase. If, however, the chargeable consideration is more than £500,000 then, under Schedule 4A Finance Act 2003, the purchase may be subject to SDLT at a flat rate tax of 15% on the total chargeable consideration.⁴
- 3.25 With the proposed introduction of a surcharge on the residential rates, maintaining the 15% rate may lead to distortions in respect of the most expensive residential properties as it would no longer be the highest rate chargeable.
- 3.26 The government therefore proposes that the surcharge will apply so that non-UK resident companies purchasing residential property that are subject to a flat rate of SDLT of 15% will be also be subject to an additional 1% on their purchase. The government does not propose changing any of the existing reliefs from the 15% rate.⁵
- 3.27 If a company's acquisition of residential property is not subject to the 15% rate of SDLT, the acquisition will normally be subject to the higher rates. The government's proposals on the higher rates and non-UK resident purchasers are dealt with in Chapter 6.

Question 7: Do you have any views on non-UK resident individuals using UK resident companies to purchase residential properties?

Question 8: Do you have any views on the suitability of using the close company test as the basis for determining whether a company is under the control of non-UK resident persons?

Question 9: Do you have any views on applying the attribution of rights rules at section 451 CTA 2010 between persons of differing residence status?

³ A central public register maintained by Companies House for companies and other entities who are obliged by law to record details of their beneficial ownership – See: <https://www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships>

⁴ See Annex B for details of the applicable rates under column "Certain corporate bodies subject to the 15% flat rate"

⁵ Schedule 4A to the Finance Act 2003

Question 10: Do you have any views on potential problems which might arise when using the definition of control at section 450 CTA 2010?

Question 11: Do you have any views on whether any of the exemptions at S442 to S447 CTA 2010 should remain in place or be removed for the purposes of the surcharge?

Question 12: Would you prefer to see a different test applied? If so, what test and why?

Chapter 3B: Partnerships

3.28 For SDLT purposes partnerships are treated as if the partners are joint purchasers of partnership property.⁶ The government intends that this treatment should apply for the purposes of deciding whether the surcharge will apply to purchases by partnerships.

3.29 Where two or more people purchase a property jointly, for SDLT purposes this is treated as a single purchase of the whole interest acquired, and this is how partnerships are treated. In line with this, the proposal is that the surcharge will apply if any one of the partners is non-UK resident as defined by the relevant residence test set out in Chapters 2 and 3. See Chapter 6 for proposed treatment of joint purchasers.

3.30 Special rules apply to partnership transactions that involve the transfer of property:⁷

- from a partner, or a person connected with a partner, to a partnership,
- to a partnership in return for an interest in that partnership,
- from a partnership to a person who is or has been a partner in the partnership, or a person connected with such a person.

3.31 Where in any of the circumstances above the partnership is treated as the purchaser the rules outlined above will apply, with the partners being treated as joint purchasers of the property. Where the purchaser is a partner, former partner or person connected with either a partner or former partner, the residency status of the purchaser alone, as set out in Chapter 2 and 3 above, will determine whether the surcharge will apply or not.

Question 13: Do you have any comments on the proposed treatment of partnerships as joint purchasers?

Question 14: Do you think there should be different test applied for purchases by partnerships? If so, what test and why?

⁶ Schedule 15 Finance Act 2003, paragraph 2

⁷ Schedule 15 Finance Act 2003, Part 3

Chapter 3C: Trusts

- 3.32 The existing SDLT rules for acquisitions by trusts vary depending on the type of trust and the nature of the property interest being acquired.⁸ The higher rates have special rules relating to trusts.
- 3.33 There are existing tax rules which determine the residency status of a settlement trust, which are set out below. The government expects that trustees and advisors of settlement trusts will generally be familiar with these rules and does not propose creating a new residence test for the purposes of SDLT. However, some modifications to the existing tests are likely to be needed to apply them to SDLT.

Bare trusts not involving the grant of a lease

- 3.34 Under the current rules, an acquisition by a bare trustee buying as nominee for another person (or persons) who will have the beneficial interest in the property (or who would have the beneficial interest but for being a minor or disabled), is in most cases treated as transparent. That is, SDLT applies as though the acquisition were made directly by the person(s) (beneficiaries) for whom the trustee is buying the property.
- 3.35 The government does not intend changing this treatment under the new rules. This means that the surcharge will apply if the beneficiary (or one of the beneficiaries) of the bare trust is non-UK resident. This applies irrespective of the bare trustee's residency status. This doesn't apply where the transaction involves the grant of a new lease.

Settlements and bare trusts involving the grant of a new lease

- 3.36 Under the current rules, for all trusts which are not bare trusts, and bare trusts where the interest being acquired is a new lease, the trustees are generally treated as the purchaser in a property transaction. In these cases, it is the trustees who have the obligation to notify HMRC about the transaction and to pay the tax due.
- 3.37 However, where the acquisition is of one or more dwellings, in determining whether the higher rates are due, the circumstances of the beneficiary are considered (sometimes referred to as a 'look-through' test). If any individual beneficiary is entitled either to live in the property for life, or to receive rental income arising from it, then the SDLT rules apply as though that beneficiary was the purchaser. That applies whether the settlement has only one beneficiary or whether it has multiple beneficiaries.
- 3.38 If no individual beneficiary is entitled to live in the property for life or to receive income, then the acquisition of a dwelling by a trust is chargeable at the higher rates.

⁸ The rules for trusts are primarily in Schedule 16, Finance Act 2003

3.39 The proposal is that where a dwelling is acquired by a settlement trust (or by a bare trustee on the grant of a lease), the surcharge will apply in addition to these existing rules as follows:

- a similar 'look-through' test to that described above will operate to determine how the surcharge will apply.
- if any individual beneficiary has a lifetime right to occupy, or the right to income, and the beneficiary is non-UK resident according to the test outlined in Chapter 2 above, then the surcharge will apply on top of the SDLT rate which would apply if that individual were purchasing directly. The residence of the trust is not relevant in this case.
- if no individual beneficiary has a lifetime right to occupy or right to income, then the charge will be determined by the trust's residence status. A UK-resident trust will be chargeable at the higher rates applicable on transactions involving residential property. A non-UK resident trust will have the surcharge applied on top of those rates.
- if the relevant land transaction involves more than one property and an individual beneficiary does not have a lifetime right to occupy, or receive income from, all the properties in the transaction, then the trust will be treated as the purchaser and, where the trust is non-UK resident, the surcharge will apply on top of the existing charge applying to a trust purchasing residential property.

Residence test for settlements and bare trusts involving the grant of a new lease

3.40 Under the current rules, there are existing tests of residence for trusts, for Income Tax and Capital Gains Tax purposes.⁹ These take into account the fact that trustees can be individuals, companies or a mixture of both, and the government expects that most trusts, or their professional advisors, will already be familiar with them. For that reason, it is proposed that these existing tests also be used for the surcharge.

3.41 Using these tests, if at a given time either;

- all the trustees are UK resident¹⁰, or
- at least one trustee is UK resident and one is not, AND either
 - the settlement arose as a result of a death of the settlor and the settlor was UK resident or domiciled immediately before his death, OR
 - when the settlement was made the settlor was UK resident or domiciled

then the trust is treated as UK resident at that time. Otherwise it is treated as non-UK resident.

⁹ The relevant legislation is at sections 475/476 Income Tax Act 2007, and section 69 Taxation of Chargeable Gains Act 1992.

¹⁰ Residence tests for individual trustees use the Statutory Residence Test at Schedule 45 Finance Act 2013. Corporate trustees' residence is established via normal residency tests for companies, in Chapter 3 Part 2 Corporation Tax Act 2009.

- 3.42 The existing Statutory Residence Tests for individual trustees apply by reference to an individual trustee's physical presence in or out of the UK, as well as other tests of connection to the UK, during the course of a particular tax year. There are special rules to take account of cases where an individual begins or ceases to be a trustee during the relevant period. The government believes that trustees and their advisors are likely to be familiar with the existing residence tests, so there is less of a case for using a simplified version as has been set out in Chapter 2 for individuals.
- 3.43 However, as described in Chapter 2, the concept of a tax year is not relevant for SDLT. The government proposes applying the existing residence tests for individual trustees, but replacing references to the tax year with references to the period of 12 months ending with the date of the transaction.

Question 15: Do you have any views on the proposed SDLT treatment where the acquisition is made by a trust?

Question 16: Do you agree that the Statutory Residence Test for individual trustees will work for SDLT if references to tax year are replaced by references to the 12-month period ending with the date of the transaction? If not, why not? What alternatives would you propose?

Question 17: How will the proposed surcharge on residential properties affect purchase decisions of non-UK resident non-natural persons (companies, trusts and partnerships) in England and Northern Ireland?

Chapter 4

Reliefs and refunds from the surcharge

- 4.1 Reliefs from and refunds of the surcharge will be available in a limited number of circumstances to ensure that it is applied in a manner consistent with the policy intention.

Reliefs from the surcharge

- 4.2 The government has considered circumstances where the surcharge should not apply to purchases of residential property in England and Northern Ireland.
- 4.3 The government will not provide relief from the surcharge for any non-UK resident non-natural persons purchasing residential property in England and Northern Ireland as it has not identified any instances in which reliefs would fit with the policy objective of the surcharge (although all SDLT reliefs normally available, such as group relief and charities relief, will in most cases apply as usual – see Chapter 5).
- 4.4 For individuals, the government is considering an upfront relief for all those non-UK residents who at the time of the transaction are Crown employees subject to UK Income Tax.¹
- 4.5 The government is minded to introduce this relief as it would ensure that members of the armed forces, diplomats and civil servants on overseas postings will receive a relief from the surcharge if they are purchasing residential property in England and Northern Ireland.
- 4.6 No further reliefs from the surcharge will be available, although individuals will be able to claim a refund if they become UK resident after making their purchase, as outlined below.

Question 18: Do you have any comments about the proposed reliefs from the surcharge?

Question 19: Are there any other categories of individual which you think the Government should consider providing a relief for and, if so, why?

¹ As defined by section 28(2) Income Tax, Earnings and Pension Act 2003

Refunds of the surcharge

- 4.7 The government does not want the surcharge to act as a barrier to anybody coming to live and work in the UK.
- 4.8 The government therefore proposes that where an individual who has been subject to the surcharge spends 183 days or more in the UK in the 12 months following day of transaction they will be eligible for a refund of the surcharge.
- 4.9 Refunds will also be available in some cases where the residence status of an individual, rather than the purchaser, is used to determine whether the surcharge applies or not. Circumstances where this may occur are alternative property finance arrangements (see Chapter 5) and some trust arrangements (see Chapter 3C). This will not apply where a company is liable to the surcharge as a result of the additional close company test (see Chapter 3A).
- 4.10 For a refund to be claimed, all purchasers must be individuals and spend 183 days in the UK in the 12 months after the effective date of the transaction. Whilst this treatment may lead to some issues for certain people, for example purchasing couples who live in different countries, any other treatment would require complicated rules to be drawn up to prevent people avoiding the surcharge. This would not be compatible with the government's objective of making the surcharge as simple as possible to understand and apply.
- 4.11 If a property is jointly purchased, all purchasers must be individuals who are resident in the UK for 183 days of the 12 months following the effective date of the transaction for the purchase to be eligible for a refund.
- 4.12 Details on how the refund would be claimed are given in Chapter 7.
- 4.13 The government considered applying an upfront relief for those who intend to spend 183 days of the 12 months following their transaction in the UK, rather than proposing a refund once the surcharge has been paid. However, as this would rely on the future intentions of the purchaser, which may or may not be carried through, the administration associated with ensuring that the prospective tests have been met make this proposition unattractive.

Example 2

Sarah lives in Canada and is moving to the UK to work. She doesn't already own a property and is not a first-time buyer. Sarah purchases a property for £300,000 on 1 February 2023. In the 12 months between 2 February 2022 and 1 February 2023 Sarah spent 300 days outside the UK. She is therefore non-UK resident for the purposes of the surcharge and will pay £8,000 of SDLT:

- 1% up to £125,000 = £1,250
- 3% of £125,000 to £250,00 = £3,750

- 6% of £250,000 to £300,000 = £3,000

However, between 2 February 2023 and 1 February 2024 Sarah spends 290 days in the UK. This makes her eligible for a refund of the surcharge. SDLT at the standard rates would have been £5,000 and Sarah is therefore able to claim a refund of £3,000 (£8,000-£5,000).

Question 20: Do you have any views on the proposed refunds available for those who have paid the surcharge?

Question 21: Do you have any views on the criteria the government is suggesting determining whether a purchaser would be eligible for a refund?

Chapter 5

Existing SDLT reliefs and the surcharge

- 5.1 One of the government's principles for the surcharge is that it will apply on top of existing SDLT legislation (including existing rates) and rules found elsewhere in the tax system.
- 5.2 Where the purchaser is non-UK resident, and the transaction would currently be eligible for a specific relief, in most cases that relief will continue to be available.
- 5.3 This chapter covers how the surcharge will interact with some of the reliefs that already exist within SDLT.

First time buyers' relief

- 5.4 Non-UK residents who meet the criteria for first time buyers' relief (FTBR) will pay the surcharge at 1% on the chargeable consideration between £0 - £300,000 and 6% (5% + the 1% surcharge) on any portion between £300,000 - £500,000.

Example 3

Joseph currently lives in South America and is purchasing a property for £325,000 in Northern Ireland on 15 July 2023. He is a first-time buyer who has never owned a property anywhere else in the world before and he intends to use this property as his main residence as he has recently moved to Belfast for work.

Joseph spent 250 days outside the UK in the 12 months between 16 July 2022 and 15 July 2023 making him subject to the surcharge.

As a non-UK resident buyer eligible for FTBR, his SDLT liability is:

- 1% up to £300,000 = £3,000
- 6% of £300,000 to £325,000 = £1,500

As outlined in Chapter 4, if Joseph spends more than 183 days in the UK in the 12 months from 16 July 2023 he can claim a refund of the surcharge meaning he would receive back £3,250 (£4,500 - £1,250).¹

- 5.5 Purchases over the £500,000 threshold made by non-UK resident first-time buyers will attract the surcharge on top of the SDLT rates applicable to their purchase. Further background on FTBR can be found in Annex B.

Multiple dwellings relief

- 5.6 Multiple Dwellings Relief will be available for transactions that are subject to the surcharge, which means where two or more dwellings are purchased in single or linked transactions, the SDLT due can be calculated based on the average residential property price rather than on the total price paid for all the dwellings. There is a minimum rate of tax under the relief of 1% of the total amount paid for the dwellings, which will remain at the same level for those subject to the surcharge.

Alternative property finance relief

- 5.7 Alternative Property Finance Relief is available where the buyer does not use a conventional mortgage to finance their property purchase. The relief ensures that where a purchase is financed using one of the alternative methods set out in the legislation the SDLT due is the same as it would be if the property were purchased using a conventional mortgage.² Where an alternative property finance product is used the financial institution involved in the arrangements purchases the property from the vendor and is responsible for filing a SDLT return and paying any tax due.
- 5.8 To ensure that non-UK residents using an alternative property finance product to finance a property purchase are subject to the surcharge, the residency status of the person obtaining the finance, rather than the financial institution, will be used to assess whether the surcharge applies. The surcharge will apply if that person is a non-UK resident as defined by the tests set out in Chapter 2 or 3.
- 5.9 The financial institution will remain responsible for submitting the SDLT return and paying any tax due.

Partial charities relief

- 5.10 Relief from SDLT is available if a charity purchases a property that is to be used for qualifying charitable purposes.³ Not all charities are eligible to claim the relief. Those charities that are eligible are defined in Schedule 6 Finance Act 2010.

¹ Were Joseph UK resident his SDLT liability would have been:
- 0% up to £300,000 = £0
- 5% of £300,000 to £325,000 = £1,250

² Sections 71A to 73BA Finance Act 2003

³ Schedule 8 Finance Act 2003

- 5.11 Where an eligible charity purchases property jointly as tenants in common with a non-charity, partial relief is available, with the SDLT reduced by the lower of:
- the proportion of the property acquired by the charity, or
 - the proportion of the chargeable consideration given by the charity.
- 5.12 Although partial relief is available, for SDLT purposes the charity and non-charity remain joint purchasers of the property, having joint responsibility for any obligations under the SDLT legislation and joint and several liability for any tax charge that arises.
- 5.13 In line with the proposed treatment for joint purchasers, where partial charities relief is available, the surcharge will apply if any of the joint purchasers are non-UK resident (see Chapter 6 for treatment of joint purchasers).

Exercise of collective rights by tenants (collective enfranchisement)⁴

- 5.14 Where the tenants of flats act together to exercise a statutory right to purchase the freehold of the block of flats, the SDLT due is based on the average price per qualifying flat (similar to Multiple Dwellings Relief) rather than the total amount paid for the block.
- 5.15 Where the purchaser is acting as a nominee (bare trustee) for the tenants, with the tenants owning the beneficial interest in the property, the bare trust rules as explained at Chapter 3 will apply with the tenants being joint treated as purchasers of the freehold. Therefore, if one or more of the tenants is non-UK resident the surcharge will apply to the whole transaction, on top of the rates that apply under the above rules.
- 5.16 Where the purchaser is not acting as a nominee for the tenants it will be the residence status of the purchaser that will determine whether the non-resident surcharge applies.
- 5.17 The above rules do not apply if the average price of each qualifying flat is more than £500,000 and the purchaser is one of the entities to which the 15% flat rate of SDLT applies. In such cases the 15% rate applies to the total purchase price. As set out in Chapter 3 if the purchaser is non-UK resident the surcharge will apply on top of the 15% rate.

Seeding relief⁵

- 5.18 SDLT relief is available where property is transferred to a property authorised investment fund (PAIF) or a co-ownership authorised contractual scheme (COACS) in exchange for units in the fund and certain other conditions are met. EEA equivalents of PAIFs and CoACS are also able to claim the relief.
- 5.19 Where the relevant conditions are met, full relief will be available and the surcharge will not apply. Where the conditions for relief are not met, the

⁴ Section 74 Finance Act 2003

⁵ Ibid

surcharge will apply if the purchaser is non-UK resident in accordance with the tests set out in Chapter 3.

Question 22: Do you have any views about how the reliefs will apply in relation to the surcharge?

Chapter 6

Other SDLT rules and the surcharge

- 6.1 This chapter covers the interaction between the surcharge and other existing rules within SDLT. Again, the guiding principle has been to align the surcharge as closely as possible with existing SDLT legislation.

Mixed use transactions

- 6.2 Mixed use transactions (i.e. those involving residential and non-residential property) are treated as non-residential and therefore not within the scope of the surcharge which applies to residential transactions only. This includes mixed use properties and mixed used portfolios.

Purchases of 6 or more dwellings

- 6.3 Purchases of 6 or more separate dwellings are treated as non-residential transactions and therefore are not within the scope of the surcharge.

Joint purchasers

- 6.4 Where two or more people purchase a property jointly, either as joint tenants or tenants in common, for SDLT purposes this is treated as a single purchase of the whole interest acquired. Only one land transaction return is required and all the purchasers are jointly and severally liable for the tax due.
- 6.5 There are a number of special rules in respect of certain joint purchases which look either at the status of only one of the joint purchasers, or at all of them.
- 6.6 For example, the higher rates will apply if any one of the joint purchasers meet the relevant conditions.
- 6.7 With the exception of charities relief (see Chapter 5), SDLT reliefs are only available if all the joint purchasers meet the relevant conditions. For example, FTBR can only be claimed if all the purchasers are first time buyers who intend to occupy the property as their only or main residence.
- 6.8 The surcharge will apply if any one of the joint purchasers is non-UK resident as defined by the relevant residence test set out in Chapters 2 and 3.

Marriage and the surcharge

- 6.9 The joint purchase rule above will also apply to married couples and civil partners where a property is jointly purchased, with the surcharge applying if either one of them is non-UK resident. However, where a property is purchased solely by a UK resident, the surcharge will not apply even where their spouse is non-UK resident.

Linked transactions

6.10 Transactions are linked for SDLT purposes if they form a single scheme, arrangement or series of transactions between the same seller and buyer or, in either case, persons connected with them.¹ In such cases the SDLT due is based on the total amount paid for all the linked transactions, although where two or more dwellings are purchased Multiple Dwellings Relief will be available.²

6.11 Where the purchasers in linked transactions are not the same, but are connected and at least one of them is non-UK resident, the proposal is that all the purchasers will be treated as joint purchasers of the linked transactions and the surcharge will apply on top of the rates applicable to the purchases.

Higher rates of SDLT³

6.12 The surcharge will apply on top of the higher rates. See Annex B for further details on the higher rates. The higher rates refund mechanism will not change as a consequence of the surcharge.

Question 23: Do you have any views on the proposed treatment where there is an interaction between existing SDLT rules and the surcharge?

¹ Section 108 Finance Act 2003

² Schedule 6B Finance Act 2003

³ Schedule 4ZA Finance Act 2003

Chapter 7

Administration and compliance of the surcharge

- 7.1 The government's intention is that the administration of the surcharge, and compliance with its requirements, should largely mirror the administrative and compliance provisions which already apply to SDLT.
- 7.2 This will keep to a minimum any additional considerations for purchasers and conveyancers. The government therefore proposes that the administrative and compliance provisions for the surcharge are identical to the current provisions in SDLT, except for the two changes set out below.

Changes to the SDLT return form

- 7.3 It is envisaged that some changes will be needed to the SDLT return to require purchasers or conveyancers to confirm that the surcharge applies.
- 7.4 Chapter 4 details the reliefs from the surcharge. It is also envisaged that the return form will be revised to require purchasers and/conveyancers to indicate which relief applies, consistent with other claims for relief from SDLT.
- 7.5 The precise changes needed will, however, depend on the ultimate detailed design of the measure.

Refunds and amendments to SDLT returns

- 7.6 As set out in Chapter 4, the proposal is that whilst purchasers (individuals) who have spent fewer than 183 days in the UK in the 12 months up to and including the date of transaction will initially have to pay the surcharge, they will be able to claim a refund of the surcharge if they have spent 183 days or more in the UK in the 12 months following the effective date of the transaction.
- 7.7 The government proposes that they will be able to claim a refund of the surcharge by amending their SDLT return to show that, having met the post-transaction residence test, they are no longer liable to the surcharge.
- 7.8 The general time limit for amending a SDLT return is 12 months from the statutory filing date. A purchaser effectively has 12 months to put right something that was not known or was overlooked in the initial return.
- 7.9 It is recognised, however, that whether or not a purchaser who has paid the surcharge subsequently spends 183 days or more in the UK in the 12 months following the date of transaction may not be known until the last

day of that 12-month period. Therefore, it is proposed to extend by a further 12 months, the period in which an amended return can be made where that amendment relates to a claim for a refund of the surcharge.

Example 4

Bill purchases a house in the UK on 1 June 2023 having spent fewer than 183 days in the UK in the previous 12 months, and so is liable to pay the 1% surcharge. He has to deliver a SDLT return and pay the tax by 15 June 2023.

Bill spends at least 183 days in the UK in the 12 months following the transaction date of 1 June 2023. He is therefore eligible to claim a refund of the 1% surcharge. He can do so by amending his SDLT return within the two-year period ending 14 June 2025.

Any amendment to that return other than for the purposes of claiming a refund of the surcharge must be made to the normal time limits; i.e. within 12 months of the filing date.

Question 24: Do you have any views on the proposed approach for administration and compliance for the surcharge above?

Question 25: Are there any other changes to the administrative and compliance provisions in SDLT that the government should consider changing for the purposes of the surcharge?

List of consultation questions

Question 1: Do you have any views on the proposed SDLT residence test for non-UK resident individuals?

Question 2: Would you prefer to see a different residence test applied? If so, what test and why?

Question 3: How will the proposed surcharge on residential properties affect purchase decisions of non-UK resident individuals in England and Northern Ireland?

Question 4: Do you agree that a rate of 1% for the surcharge strikes the right balance between the government's objectives on home ownership and the UK remaining an open and dynamic economy?

Question 5: Do you have any views on the proposed company residence test for the surcharge?

Question 6: Would you prefer to see a different residence test applied? If so, what test and why?

Question 7: Do you have any views on non-UK resident individuals using UK resident companies to purchase residential properties?

Question 8: Do you have any views on the suitability of using the close company test as the basis for determining whether a company is under the control of non-UK resident persons?

Question 9: Do you have any views on applying the attribution of rights rules at section 451 CTA 2010 between persons of differing residence status?

Question 10: Do you have any views on potential problems which might arise when using the definition of control at section 450 CTA 2010?

Question 11: Do you have any views on whether any of the exemptions at S442 to S447 CTA 2010 should remain in place or be removed for the purposes of the surcharge?

Question 12: Would you prefer to see a different test applied? If so, what test and why?

Question 13: Do you have any comments on the proposed treatment of partnerships as joint purchasers?

Question 14: Do you think there should be different test applied for purchases by partnerships? If so, what test and why?

Question 15: Do you have any views on the proposed SDLT treatment where the acquisition is made by a trust?

Question 16: Do you agree that the Statutory Residence Test for individual trustees will work for SDLT if references to tax year are replaced by references to the 12-month period ending with the date of the transaction? If not, why not? What alternatives would you propose?

Question 17: How will the proposed surcharge on residential properties affect purchase decisions of non-UK resident non-natural persons (companies, trusts and partnerships) in England and Northern Ireland?

Question 18: Do you have any comments about the proposed reliefs from the surcharge?

Question 19: Are there any other categories of individual which you think the Government should consider providing a relief for and, if so, why?

Question 20: Do you have any views on the proposed refunds available for those who have paid the surcharge?

Question 21: Do you have any views on the criteria the government is suggesting determining whether a purchaser would be eligible for a refund?

Question 22: Do you have any views about how the reliefs will apply in relation to the surcharge?

Question 23: Do you have any views on the proposed treatment where there is an interaction between existing SDLT rules and the surcharge?

Question 24: Do you have any views on the proposed approach for administration and compliance for the surcharge above?

Question 25: Are there any other changes to the administrative and compliance provisions in SDLT that the government should consider changing for the purposes of the surcharge?

Annex A

Survey

Below is a short survey the government hopes will assist us further understand the how purchasers may change their behaviour in response to the surcharge. The government would be grateful if all of those who respond to the consultation can also fill out this survey.

- 1) Are you a residential property purchaser or a business working for clients who purchase residential properties?
 - If you are, or in the future are likely to be, a property purchaser, please go to question 2
 - If your business advises clients on property purchases, please go to question 9

Questions for property purchasers:

2) Are you

- An individual
- A company
- A trust
- A partnership
- Other (please state)

3) Will you be a non-UK resident under the proposed residency test set out in this consultation document?

- Yes
- No
- Unsure/not applicable

If "Yes", please answer the following questions:

4) Have you purchased a residential property in the period April 2017 to March 2018?

- Yes
- No

5) If you answered no, do you plan to purchase a property in the next 12 months?

- Yes
- No

If you answered "Yes" to either question 4 or 5, could you please tell us more about your recent or upcoming property purchase by answering the following questions?

6) Have you purchased or will purchase this property as a:

- Main residence
- First home
- Additional property

- Letting to private tenants
- Letting to relatives

7) Could you indicate the

a) Price of the property:

- Up to and including £250,000
- £250,001 to £500,000
- £500,001 to £1,000,000
- £1,000,001 to £2,000,000
- Above £2,000,000

b) Region of purchase:

- North East
- North West
- Yorkshire and the Humber
- East Midlands
- West Midlands
- East of England
- London
- South East
- South West
- Northern Ireland

8) If you have or will purchase a property, will you claim any of the following reliefs? Please select

- First-time buyers' relief
- Multiple dwellings relief
- Any other reliefs – please specify
- Don't know/ not applicable

Questions for businesses advising clients on property purchases:

9) If you manage clients with property interests, please specify which of the following describe you:

- A lawyer/conveyancer/solicitor
- A property developer
- An estate agent
- Tax advisor/consultancy
- Another type of business – please provide details

10) What proportion of your clients are likely to be non-UK residents for SDLT purposes under the proposed residency definitions set out in this consultation document?

- 0 to 20%
- 20 to 40%
- 40 to 60%

- 60 to 80%
- 80 to 100%
- Don't know/not applicable

11) In the table below, please indicate how many non-UK resident property purchases are undertaken by your clients in each region by price range.

	Number of residential property sales to non-UK residents by price					
	Up to and including £250,000	£250,001 to £500,000	£500,001 to £1,000,000	£1,000,001 to £2,000,000	Above £2,000,000	Do not know/not applicable
North West						
Yorkshire and the Humber						
East Midlands						
West Midlands						
East of England						
London						
South East						
South West						
Northern Ireland						
Do not know/ Not applicable						

12) What proportion of your clients that are non-UK resident and have purchased property in England or Northern Ireland in the 2017-18 tax year have made use of

- Multiple dwellings relief
- First time buyers' relief
- Other reliefs
- Don't know/not applicable

Annex B

SDLT rates tables

Current SDLT rates

Value ³	Standard Rates ¹		Higher Rates ²		First Time Buyer Relief		Certain corporate bodies subject to 15% flat rate		Rental element of leasehold purchases	
	Value	Rate	Value	Rate	Value	Rate	Value	Rate	Value (NPV) ⁴	Rate
£0 - £125,000	0%	3% ⁵	£0 - £300,000	0%	£0 - £125,000	3% ⁶	£0 - £125,000	0%	£0 - £125,000	0%
£125,000 - £250,000	2%	5%	£300,000 - £500,000	5%	£125,000 - £250,000	5%	£125,000 +	1%	£125,000 +	1%
£250,000 - £925,000	5%	8%			£250,000 - £500,000	8%				
£925,000 - £1.5m	10%	13%			£500,000 +	15% ⁷				
£1.5m +	12%	15%								

¹ These rates also apply to the premium element of leasehold transactions.

² The higher rates apply to purchases of additional dwellings and purchases of dwellings by persons other than an individual.

³ Unless otherwise stated, rates quoted in all tables apply to the proportion of the chargeable consideration that falls within that specific value range.

⁴ NPV = Net Present Value. The NPV of the rental element of a leasehold purchase can be calculated using the GOV.uk [SDLT lease transactions calculator](#).

⁵ Where the value of the dwelling is below £40,000, no SDLT is due.

⁶ Ibid.

⁷ Where the value of a dwelling exceeds £500,000, the 15% rate supersedes the application of preceding rates and is applicable to the entire chargeable consideration. Where the corporate body is eligible for relief from the 15% rate, the higher rates apply.

Proposed SDLT rates for non-UK residents

Value	Standard Rates ⁸	Higher Rates ⁹	First Time Buyer Relief		Certain corporate bodies subject to 15% flat rate		Rental element of leasehold purchases	
	Value	Rate	Value	Rate	Value	Rate	Value (NPV)	Rate
£0 - £125,000	1% ¹⁰	4% ¹¹	£0 - £300,000	1%	£0 - £125,000	4% ¹²	£0 - £125,000	1%
£125,000 - £250,000	3%	6%	£300,000 - £500,000	6%	£125,000 - £250,000	6%	£125,000 +	2%
£250,000 - £925,000	6%	9%			£250,000 - £500,000	9%		
£925,000 - £1.5m	11%	14%			£500,000 +	16% ¹³		
£1.5m +	13%	16%						

⁸ These rates will also apply to the premium element of leasehold transactions.

⁹ The higher rates will apply to purchases of additional dwellings and purchases of dwellings by persons other than an individual.

¹⁰ Where the value of the dwelling is below £40,000, no SDLT will be due.

¹¹ Ibid.

¹² Ibid.

¹³ Where the value of a dwelling exceeds £500,000, a 16% rate will supersede the application of preceding rates and be applicable to the entire chargeable consideration. Where the corporate body is eligible for relief from the 15% rate, the higher rates will apply.

HM Treasury contacts

This document can be downloaded from
www.gov.uk

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