

1 SDLT: increased rates for non-resident transactions

Schedule 1 makes provision for increased rates of stamp duty land tax in respect of non-resident transactions.

SDLT: INCREASED RATES FOR NON-RESIDENT TRANSACTIONS

Amendments of FA 2003

1 In FA 2003, Part 4 (stamp duty land tax) is amended as follows.

2 After section 75 insert –

“Increased rates for non-resident transactions

75ZA Increased rates for non-resident transactions

- (1) In its application for the purpose of determining the amount of tax chargeable in respect of a chargeable transaction that is a non-resident transaction, this Part has effect as if 2% were added to each rate specified in the rate-specifying provisions.
- (2) The “rate-specifying provisions” are –
 - (a) in section 55(1B), Table A;
 - (b) in Schedule 4ZA, in paragraph 1(2), Table A;
 - (c) in Schedule 4A, paragraph 3(1)(a);
 - (d) in Schedule 5, in paragraph 2(3), Table A;
 - (e) in Schedule 6ZA, in paragraph 4, Table A;
 - (f) in section 74(1A), Step 4.
- (3) Schedule 9A defines “non-resident transaction” and makes further provision in connection with this section.”

3 After section 75ZA insert –

“Anti-avoidance”.

4 In section 101 (unit trust schemes), in subsection (7), at the end insert “, or Schedule 9A (increased rates for non-resident transactions).”

5 After Schedule 9 insert –

“SCHEDULE 9A

Section 75ZA

INCREASED RATES FOR NON-RESIDENT TRANSACTIONS**PART 1****INTRODUCTION**

- 1 This Schedule is arranged as follows –
 - (a) Part 2 explains how to determine for the purposes of this Part of this Act whether a chargeable transaction is a “non-resident transaction”;
 - (b) Part 3 explains how to determine for the purposes of this Schedule whether an individual is “non-resident” in relation to a chargeable transaction;
 - (c) Part 4 explains how to determine for the purposes of this Schedule whether a company is “non-resident” in relation to a chargeable transaction;

- (d) Part 5 contains special rules applying in relation to particular purchasers and transactions;
- (e) Part 6 contains supplementary provision.

PART 2

MEANING OF “NON-RESIDENT TRANSACTION”

Meaning of “non-resident transaction”

- 2 (1) A chargeable transaction is a “non-resident transaction” for the purposes of this Part of this Act if –
- (a) the purchaser is, or (if there is more than one) the purchasers include, a person who is non-resident in relation to the transaction,
 - (b) the main subject-matter of the transaction consists of a major interest in a dwelling or dwellings,
 - (c) that major interest, at the beginning of the effective date of the transaction –
 - (i) is not a term of years absolute or leasehold estate that has 21 years or less to run, and
 - (ii) is not subject to a relevant inferior interest, and
 - (d) the chargeable consideration for the transaction is £40,000 or more.
- (2) For the purposes of sub-paragraph (1) –
 “major interest in a dwelling” includes an undivided share in a major interest in a dwelling;
 an interest is “subject to a relevant inferior interest” at any time if, at that time, a term of years absolute or leasehold estate granted out of it (whether subsisting at law or in equity) has more than 21 years to run.
- (3) For provision modifying sub-paragraph (1)(a) in its application to chargeable transactions of particular descriptions, see –
 paragraph 13 (bare trust acquiring new lease);
 paragraph 14 (purchases by certain settlements).
- (4) Sub-paragraph (1) is subject to paragraph 17 (completion of contract previously substantially performed).

PART 3

“NON-RESIDENT” IN RELATION TO A CHARGEABLE TRANSACTION: INDIVIDUALS

Whether individual “non-resident” in relation to a chargeable transaction

- 3 For the purposes of this Schedule, an individual is “non-resident” in relation to a chargeable transaction if the individual is not UK resident in relation to the transaction (see paragraphs 4 and 5).

Whether individual “UK resident” in relation to a chargeable transaction: basic rule

- 4 (1) For the purposes of this Schedule, an individual is “UK resident” in relation to a chargeable transaction if the individual is present in the United Kingdom on at least 183 days during any continuous period of 365 days that falls within the relevant period.
- (2) “The relevant period” means the period that—
- (a) begins with the day 364 days before the effective date of the chargeable transaction, and
 - (b) ends with the day 365 days after the effective date of the chargeable transaction.
- (3) This paragraph does not apply in relation to a chargeable transaction to which paragraph 5 applies.
- (4) References in this paragraph to an individual being present in the United Kingdom on a day are to the individual being present in the United Kingdom at the end of that day.
- (5) This paragraph is subject to paragraph 12 (spouses and civil partners of UK residents).

Whether individual “UK resident” in relation to a chargeable transaction: special cases

- 5 (1) For the purposes of this Schedule, an individual is “UK resident” in relation to a chargeable transaction to which this paragraph applies if the individual is present in the United Kingdom on at least 183 days during the period that—
- (a) begins with the day 364 days before the effective date of the chargeable transaction, and
 - (b) ends with the effective date of the chargeable transaction.
- (2) This paragraph applies to a chargeable transaction if any of conditions A to C is met in relation to the transaction.
- (3) Condition A is that the purchaser is, or (if there is more than one) the purchasers include—
- (a) a company, or
 - (b) a person acting as a trustee of a unit trust scheme.
- (4) Condition B is that the purchaser is, or (if there is more than one) the purchasers include, an individual who is treated as entering into the transaction by virtue of paragraph 2 of Schedule 15 (transaction entered into for the purposes of a partnership treated as entered into by partners).
- (5) Condition C is that—
- (a) the purchaser is, or (if there is more than one) the purchasers include, an individual who is acting as a trustee of a settlement, and
 - (b) under the terms of the settlement no beneficiary is entitled—
 - (i) to occupy the dwelling or dwellings for life, or
 - (ii) to income earned in respect of the dwelling or dwellings.

-
- (6) References in this paragraph to an individual being present in the United Kingdom on a day are to the individual being present in the United Kingdom at the end of that day.
 - (7) This paragraph is subject to paragraph 12 (spouses and civil partners of UK residents).

Crown employment

- 6 (1) For the purposes of paragraphs 4 and 5, an individual is (subject to sub-paragraph (3)) treated as present in the United Kingdom at the end of a day if at that time the individual –
 - (a) is in Crown employment, and
 - (b) is present in a country or territory outside the United Kingdom for the purpose of performing activities in the course of that employment.
- (2) For the purposes of paragraphs 4 and 5, an individual is (subject to sub-paragraph (3)) treated as present in the United Kingdom at the end of a day if at that time the individual –
 - (a) is the spouse or civil partner of an individual who is treated as present in the United Kingdom at the end of that day under sub-paragraph (1), and
 - (b) is living with that spouse or civil partner.
- (3) Sub-paragraph (1) or (2) applies in relation to an individual only if a claim that it should so apply is included in a land transaction return or an amendment of such a return.
- (4) “Crown employment” means employment under the Crown –
 - (a) which is of a public nature, and
 - (b) the earnings from which are payable out of the public revenue of the United Kingdom or of Northern Ireland.
- (5) Section 1011 of the Income Tax Act 2007 (references to married persons, or civil partners, living together) applies for the purposes of this paragraph.

PART 4

“NON-RESIDENT” IN RELATION TO A CHARGEABLE TRANSACTION: COMPANIES

Whether company is “non-resident” in relation to a chargeable transaction

- 7 (1) For the purposes of this Schedule a company is “non-resident” in relation to a chargeable transaction if either of the following conditions is met.
 - (2) The first condition is that, on the effective date of the chargeable transaction, the company is not UK resident for the purposes of the Corporation Tax Acts (see Chapter 3 of Part 2 of CTA 2009).
 - (3) The second condition is that, on the effective date of the chargeable transaction, the company (though UK resident for the purposes of the Corporation Tax Acts) –
 - (a) is a close company (see paragraph 8),

- (b) meets the non-UK control test in relation to the transaction (see paragraphs 9 and 10), and
 - (c) is not an excluded company (see paragraph 11).
- (4) This paragraph is subject to—
- (a) paragraph 15 (co-ownership authorised contractual schemes);
 - (b) paragraph 16 (alternative property finance).

Meaning of “close company”

- 8 (1) For the purposes of this Schedule, a company is a “close company” if it is a close company within the meaning given by Chapter 2 of Part 10 of CTA 2010 (basic definitions), applying that Chapter subject to the following modifications.
- (2) Section 444 (companies involved with close companies) applies as if condition A in that section were omitted.
- (3) Section 446 (particular types of quoted company not treated as close) is treated as omitted.

Non-UK control

- 9 (1) For the purposes of this Schedule, a company meets the “non-UK control test” in relation to a chargeable transaction if it is a close company within the meaning given by Chapter 2 of Part 10 of CTA 2010 (basic definitions), applying that Chapter subject to the following modifications.
- (2) Section 439 (“close company”) applies as if—
- (a) references to a participator were to a participator who is non-resident in relation to the chargeable transaction (within the meaning of this Schedule), and
 - (b) references to five or fewer participators were to any number of participators.
- (3) Section 444 (companies involved with close companies) applies as if condition A in that section were omitted.
- (4) Section 446 (particular types of quoted company not treated as close) is treated as omitted.
- (5) Section 451 (attribution of rights and powers) has effect subject to the limitations set out in paragraph 10.

Non-UK control: attribution of rights and powers

- 10 (1) This paragraph sets out limitations on the rights and powers of a person (A) that, apart from this paragraph, would be capable of being attributed to another person (B) under section 451(4) of CTA 2010, as that provision applies for the purposes of paragraph 9(1).
- (2) Where A and B are partners in a partnership, no rights and powers of A may be attributed to B under paragraph (c) or (d) of section 451(4) of CTA 2010 by virtue of that fact.

-
- (3) Where—
- (a) A and B are spouses or civil partners of each other,
 - (b) A and B are living together, and
 - (c) A is UK resident in relation to the chargeable transaction, no rights and powers of A may be attributed to B under paragraph (c) or (d) of section 451(4) of CTA 2010 by virtue of the fact mentioned in paragraph (a).
- (4) Where A's interest in a company is *de minimis*, no rights and powers of A in relation to the company may be attributed to B under any of paragraphs (a) to (d) of section 451(4) of CTA 2010.
- (5) For this purpose, A's interest in a company is "de minimis" if—
- (a) the proportion of the share capital or issued share capital in the company that A possesses or is entitled to acquire is less than 5%,
 - (b) the proportion of the voting rights in the company that A possesses or is entitled to acquire is less than 5%,
 - (c) the issued share capital in the company that A possesses or is entitled to acquire would, on the assumption that the whole of the income of the company were distributed among the participators, entitle A to receive less than 5% of the income so distributed, and
 - (d) A's rights in the company entitle A, in the event of the winding up of the company or in any other circumstances, to less than 5% of the assets of the company which would then be available for distribution among the participators.
- (6) Any rights A has as a loan creditor are to be disregarded for the purposes of the assumption in sub-paragraph (5)(c).
- (7) Section 1011 of the Income Tax Act 2007 (references to married persons, or civil partners, living together) applies for the purposes of this paragraph.

Excluded companies

- 11 A company is an "excluded company" for the purposes of paragraph 7(3)(c) if it is any of the following—
- (a) an open-ended investment company within the meaning of Part 17 of FSMA 2000 (see section 236 of that Act);
 - (b) a company UK REIT within the meaning of Part 12 of CTA 2010 (see section 524(5) of that Act);
 - (c) a company that is a member of a group UK REIT within the meaning of Part 12 of CTA 2010 (see section 523(5) of that Act).

PART 5

SPECIAL RULES FOR PARTICULAR PURCHASERS AND TRANSACTIONS

Spouses and civil partners of UK residents

- 12 (1) This paragraph applies where—

- (a) there are two or more purchasers in relation to a chargeable transaction who are or will be jointly entitled to the interest acquired, and
 - (b) the following conditions are met in relation to those purchasers.
- (2) The conditions are—
- (a) that, on the effective date of the transaction, the purchasers, or (if there are more than two) two of them, are spouses or civil partners of each other;
 - (b) that, on the effective date of the transaction, those spouses or civil partners are living together;
 - (c) that one of those spouses or civil partners is UK resident in relation to the chargeable transaction;
 - (d) that (apart from this paragraph) one of those spouses or civil partners is non-resident in relation to the chargeable transaction;
 - (e) that neither of the spouses or civil partners is acting as a trustee of a settlement.
- (3) For the purposes of this Schedule, the spouse or civil partner mentioned in sub-paragraph (2)(d) is UK resident in relation to the chargeable transaction.
- (4) Section 1011 of the Income Tax Act 2007 (references to married persons, or civil partners, living together) applies for the purposes of this paragraph.

Bare trust acquiring new lease

- 13 (1) Sub-paragraph (2) applies to a chargeable transaction if—
- (a) the purchaser is, or (if there is more than one) the purchasers include, a person (P) who is acting as a trustee of a bare trust, and
 - (b) paragraph 3(3) of Schedule 16 (trustee of bare trust granted a lease treated as purchaser of the whole of the interest acquired) applies in relation to P.
- (2) In determining for the purposes of this Part of this Act whether the chargeable transaction is a “non-resident transaction”, paragraph 2(1)(a) (condition that purchaser be non-resident) has effect as if a reference to the purchaser or purchasers—
- (a) included the beneficiary or beneficiaries of the bare trust, and
 - (b) did not include P.

Purchase by settlement if beneficiary entitled to occupy, or to income from, dwelling

- 14 (1) Sub-paragraph (2) applies to a chargeable transaction if—
- (a) the purchaser is, or (if there is more than one) the purchasers include, a person (P) who is acting as a trustee of a settlement, and
 - (b) under the terms of the settlement a beneficiary is entitled—
 - (i) to occupy the dwelling or dwellings for life, or

-
- (ii) to income earned in respect of the dwelling or dwellings.
- (2) In determining for the purposes of this Part of this Act whether the chargeable transaction is a “non-resident transaction”, paragraph 2(1)(a) (condition that purchaser be non-resident) has effect as if a reference to the purchaser or purchasers—
- (a) included the beneficiary or beneficiaries of the settlement, and
 - (b) did not include P.
- (3) In this paragraph “settlement” does not include a settlement under a unit trust scheme.

Co-ownership authorised contractual schemes

- 15 (1) Subject to sub-paragraph (2), a co-ownership authorised contractual scheme is not “non-resident” in relation to any chargeable transaction.
- (2) A collective investment scheme that is a co-ownership authorised contractual scheme by virtue of section 102A(7) (EEA schemes) is “non-resident” in relation to all chargeable transactions.

Alternative property finance

- 16 (1) Sub-paragraph (2) applies in relation to a chargeable transaction within section 71A(1)(a) (purchase of land by financial institution as part of alternative property finance arrangements).
- (2) The financial institution that enters into the transaction is “non-resident” in relation to the transaction if and only if the person with whom it enters into the arrangements mentioned in section 71A(1) is non-resident in relation to the transaction.

Completion of contract previously substantially performed

- 17 In a case within section 44(8) (contract substantially performed and subsequently completed by a conveyance) the later of the notifiable transactions mentioned in that provision is a “non-resident transaction” for the purposes of this Part if and only if the earlier of those notifiable transactions is a non-resident transaction for the purposes of this Part.

PART 6

SUPPLEMENTARY PROVISION

Completion of land transaction return

- 18 (1) Sub-paragraph (2) applies in relation to a land transaction return in respect of a chargeable transaction if—
- (a) in order to determine whether the chargeable transaction is a non-resident transaction, it is necessary to determine whether one or more individuals are UK resident in relation to the transaction under paragraph 4(1), and

- (b) that individual or any of those individuals, at the beginning of the day on which the land transaction return is delivered, has not yet met the condition in that provision (but might turn out to do so depending on their residence during the remainder of the relevant period).
- (2) The land transaction return must be prepared on the assumption that the individual or (as the case may be) each of the individuals is resident outside the United Kingdom throughout the period –
 - (a) beginning with the day on which the land transaction return is delivered, and
 - (b) ending at the end of the relevant period.
- (3) In this paragraph “the relevant period” has the same meaning as in paragraph 4(1).

Amendment of return where individual becomes UK resident after return delivered

- 19 (1) Sub-paragraph (2) applies where –
 - (a) a land transaction return in respect of a chargeable transaction is prepared on the assumption mentioned in paragraph 18(2), and
 - (b) the individual or (as the case may be) each of the individuals in respect of whom the assumption was made subsequently meets the condition in paragraph 4(1) (with the result that the transaction is not a non-resident transaction).
- (2) The land transaction return may be amended, at any time before the end of the period of 2 years beginning with day after the effective date of the transaction, to take account of the fact that the transaction is not a non-resident transaction.
- (3) Where a land transaction return is amended under sub-paragraph (2), paragraph 6(2A) of Schedule 10 (notice of amendment of return to be accompanied by the contract for the transaction etc) does not apply in relation to the amendment.

What counts as a dwelling

- 20 (1) This paragraph sets out rules for determining what counts as a dwelling for the purposes of this Schedule.
- (2) A building or part of a building counts as a dwelling if –
 - (a) it is used or suitable for use as a single dwelling, or
 - (b) it is in the process of being constructed or adapted for such use.
- (3) Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on that land) is taken to be part of that dwelling.
- (4) Land that subsists, or is to subsist, for the benefit of a dwelling is taken to be part of that dwelling.
- (5) The main subject-matter of a transaction is also taken to consist of or include an interest in a dwelling if –

-
- (a) substantial performance of a contract constitutes the effective date of that transaction by virtue of a relevant deeming provision,
 - (b) the main subject-matter of the transaction consists of or includes an interest in a building, or a part of a building, that is to be constructed or adapted under the contract for use as a single dwelling, and
 - (c) construction or adaptation of the building, or part of a building, has not begun by the time the contract is substantially performed.
- (6) In sub-paragraph (5) –
- “contract” includes any agreement;
 - “relevant deeming provision” means any of sections 44 to 45A or paragraph 5(1) or (2) of Schedule 2A or paragraph 12A of Schedule 17A;
 - “substantially performed” has the same meaning as in section 44.
- (7) A building or part of a building used for a purpose specified in section 116(2) or (3) is not used as a dwelling for the purposes of sub-paragraph (2) or (5).
- (8) Where a building or part of a building is used for a purpose mentioned in sub-paragraph (7), no account is to be taken for the purposes of sub-paragraph (2) of its suitability for any other use.

Interpretation

- 21 In this Schedule –
- “CTA 2009” means the Corporation Tax Act 2009;
 - “CTA 2010” means the Corporation Tax Act 2010;
 - “FSMA 2000” means the Financial Services and Markets Act 2000.

Power to modify this Schedule

- 22 (1) The Treasury may by regulations amend or otherwise modify this Schedule for the purpose of preventing certain chargeable transactions from being non-resident transactions for the purposes of this Schedule.
- (2) The provision which may be included in regulations under this paragraph by reason of section 114(6)(c) includes incidental or consequential provision which may cause a chargeable transaction to be a non-resident transaction for the purposes of this Schedule.”

Commencement

- 6 (1) The amendments made by this Schedule have effect in relation to any land transaction of which the effective date is, or is after, the commencement date.
- (2) But those amendments do not have effect in relation to –

- (a) a transaction effected in pursuance of a contract entered into and substantially performed before the commencement date, or
 - (b) a transaction that—
 - (i) is entered into pursuant to a contract entered into before 11 March 2020, and
 - (ii) is not excluded for the purposes of this paragraph.
- (3) A transaction is excluded for the purposes of paragraph (b) of subparagraph (2) if—
- (a) there is any variation of the contract, or assignment of rights under the contract, on or after 11 March 2020,
 - (b) the transaction is effected in consequence of the exercise on or after that date of any option, right of pre-emption or similar right, or
 - (c) on or after that date there is an assignment, subsale or other transaction relating to the whole or part of the subject-matter of the contract as a result of which a person other than the purchaser under the contract becomes entitled to call for a conveyance.
- (4) In this paragraph “the commencement date” means 1 April 2021.