



HM Treasury

Non-UK Resident Stamp Duty Land Tax Surcharge Summary of Responses

July 2020

Non-UK Resident Stamp Duty Land Tax Surcharge: Summary of Responses



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Preface

At Budget 2018 the government announced the introduction of a Stamp Duty Land Tax (SDLT) surcharge (“the surcharge”) on non-UK residents purchasing residential property in England and Northern Ireland. Spring Budget 2020 confirmed that the rate of the surcharge would be 2% and that it would come into effect from 1 April 2021. The government believes that introducing the surcharge will help make house prices more affordable, helping people get onto and move up the housing ladder, in line with wider objectives on homeownership. The money raised from the surcharge will be used to tackle rough sleeping.

The government consulted on the proposed surcharge from 11 February 2019 to 6 May 2019. The consultation received 78 written responses from professional firms, developers, estate agents, individuals and miscellaneous other bodies. The government also held 13 meetings with a variety of stakeholders to better understand their views on the proposed surcharge.

This document summarises the main responses received to the consultation and sets out the government’s proposals after considering those views. The government will consult on the draft legislation enacting the surcharge, in line with the usual approach to tax policy making.

The government is grateful to all the organisations and individuals who took the time to respond to this consultation.

Overview of respondents’ views

Consultation respondents had a wide range of views on the proposed surcharge, with some focusing on the high-level principle of the charge and others on more technical elements of the policy design.

Many respondents welcomed the government’s underlying policy objective of supporting home ownership, with a number believing the surcharge would support this objective. Similarly, many respondents spoke positively of the government’s decision to favour simplicity, where possible, in designing the surcharge. A proportion of respondents expressed concern that the surcharge would negatively impact housing supply and affect the UK’s reputation as a destination for international investment.

The following chapters detail the responses received to the questions asked in each chapter of the consultation and set out the government’s responses to the views presented.

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Chapter 1

The Surcharge for Individuals Purchasing Residential Property in England and Northern Ireland

Consultation proposals and summary of responses

1.1 The consultation detailed how the surcharge will apply to non-UK resident individuals who purchase residential property in England and Northern Ireland on top of the relevant SDLT rates paid by resident individuals in similar circumstances. This is in line with the government's objective for the surcharge to apply on top of existing SDLT rates and use rules found elsewhere in SDLT and the wider tax system.

1.2 The government proposed treating individuals as non-UK resident for the purposes of the surcharge where they spent fewer than 183 days in the UK in the 12 months ending with the date on which the purchase of the residential property occurred.

1.3 The government also proposed that where an individual who is subject to the surcharge spent 183 days or more in the UK in the 12 months following the date of purchase, they would be eligible for a refund of the surcharge. The government's proposed approach to refunds, along with reliefs from the surcharge, is dealt with in chapter 3 below.

1.4 In recognising that most people who will interact with the proposed surcharge will not be tax professionals, many respondents welcomed the simplicity of the proposed residence test.

1.5 At the same time, some were concerned that the proposed 183-day pre-transaction residence test could lead to anomalous outcomes where individuals were treated as resident under the existing Statutory Residence Test (SRT) which applies for other taxes but were treated as non-UK resident under the proposed SDLT residency test.

1.6 Some respondents requested that unavoidable absence provisions currently legislated in the SRT be replicated for the surcharge. Some also requested that individuals who expect to be resident in the UK under the SRT in the tax year of transaction be relieved of the surcharge.

1.7 The consultation asked if a surcharge rate of one per cent is set at the right level to balance the government's objectives on homeownership with the UK remaining an open and dynamic economy. Many respondents felt that a higher surcharge rate would be required to have the desired effect of making house prices

more affordable to help residents get onto the housing ladder, although some saw any surcharge as a barrier to investment in the UK.

Government response

1.8 In recognition that most stakeholders welcomed the government's proposal for a simple test of an individual's residence for the purposes of the surcharge, the government will legislate the SDLT residence test for individuals as set out in the consultation.

1.9 While the government has considered whether special provisions are needed to allow for exceptional circumstances to be taken into account, on balance it believes that the residence test and the proposed approach to refunds as detailed in Chapter 3 provide sufficient flexibility for the vast majority of customers.

1.10 The government will not use the SRT to determine the residence status of an individual for the purposes of the surcharge. Using the SRT, a test based on a tax year is ill suited for a transaction tax like SDLT and would be complicated as individuals would have to judge their residence under the SRT in almost all cases before the tax year has ended. This would create burdens for HMRC to check taxpayers' declarations whilst also complicating the surcharge as taxpayers who do not routinely assess their tax residence could be forced to engage with the SRT rather than the more straightforward SDLT test.

1.11 The government believes that a two percent surcharge strikes the right balance between being high enough to have a material impact on house prices, thereby helping residents get onto and move up the housing ladder, and the UK remaining an open and dynamic economy that welcomes inward investment.

Chapter 2

The Surcharge on Non-Natural Persons Purchasing Residential Property in England and Northern Ireland

Consultation proposals and responses received

2.1 The consultation sets out the government's intention that the surcharge applies to non-UK resident non-natural persons purchasing residential property in England and Northern Ireland. The consultation looked separately at companies, partnerships and trusts.

Companies

2.2 The consultation document set out the government's intention for the surcharge to apply to purchases by non-UK resident companies and certain UK resident close companies. To distinguish between resident and non-resident companies, the government proposed a residence test based broadly on that in operation for UK Corporation Tax. As such, a company will be UK resident and therefore not within scope of the surcharge where they are incorporated in the UK, or at the time they acquire the residential property, their central management and control is exercised in the UK.

2.3 The consultation also set out how entities regarded as companies for SDLT purposes would be treated. Where the entity is a unit trust, residence will be based upon the SDLT residence principles as related to trusts. Where the entity is a co-ownership authorised contractual scheme (CoACS), 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.

2.4 For UK resident close companies, the government proposed looking through to the residence of participators and apply the surcharge where control could be directly or indirectly exercised by one or more non-UK resident person(s). The residence status of the participators will be determined as if they were direct purchasers of the property acquired by the close company using the SDLT residence test set out in this document. This treatment was proposed to prevent non-UK residents using UK resident companies to circumvent the surcharge.

2.5 Most respondents recognised that the proposed residence test for companies was a sensible way in which to determine whether the surcharge applied. Respondents welcomed the use of established principles noting positively their familiarity for companies.

2.6 A number of tax professionals, representative bodies, solicitors and conveyancers raised concerns over the potential inconsistency where dual resident companies might be UK resident for SDLT but not for Corporation Tax, with most suggesting that the residence test be modified to reflect the application of the UK's double tax treaties.

2.7 Many respondents expressed views on the proposed treatment of UK resident companies under the control of non-UK resident individuals. On the one hand, it was argued that the surcharge should be designed in such a way as to ensure non-UK resident individuals were not able to avoid the surcharge by purchasing through a UK resident company. Others argued that the use of UK resident companies by non-UK resident individuals should be encouraged in order to promote the UK as an open and attractive place to do business, and preferable to the use of offshore companies as investment vehicles.

2.8 One respondent expressed concerns over how the test would apply to Real Estate Investment Trusts (REITs) which, although generally required to be non-close companies, can under certain exemptions be close companies. In a situation where a REIT meets both REIT requirements and the definition of a close company, the stakeholder questioned whether shares held by non-UK resident persons would make acquisitions of residential property by the REIT subject to the surcharge.

Government response

2.9 The government confirms that it will define corporate residence using the principles used for Corporation Tax, so the company will be UK-resident if it is within the scope of UK Corporation Tax at the date the property is acquired. This includes where the company is "treaty resident" for Corporation Tax purposes under a Double Taxation Agreement.

2.10 With regards to CoACS, the government have considered the proposed test of residence and to simplify matters, will provide for CoACS to be resident for SDLT but for EEA equivalent schemes to be non-UK resident.

2.11 The government will also legislate to 'look through' UK resident close companies and apply the surcharge where control of the UK company is held by a non-UK resident under the SDLT residence test outlined in Chapter 1. The 'look-through' will not apply to REITS, CoACSs or Unit Trust schemes.

Partnerships

2.12 As set out in the consultation, for SDLT purposes partnerships are treated as if the partners are joint purchasers of partnership property. In line with this, the government proposed that the surcharge would apply where any one of the partners was non-UK resident as defined by the relevant residence tests for individuals and non-natural persons set out in the consultation.

2.13 As was also set out in the consultation, there are special rules that apply to partnership transactions involving the transfer of property. The government proposed that where, under these rules, the partnership is treated as the purchaser,

the above rules will apply. Where conversely, the purchaser is or includes a partner, former partner or person connected with either a partner or former partner, the residence status of the purchaser alone will determine whether the surcharge applies.

2.14 A number of respondents expressed concern that the proposed treatment of partnerships would be unfair and disproportionate for the residence status of one partner to render the entire partnership liable to the surcharge, with several questioning the policy rationale of deeming purchases by a partnership comprising wholly of UK residents as preferable to those of a partnership comprising a single non-UK resident.

2.15 Some commented that it would be onerous for large partnerships and complex fund structures to establish the residence of every partner for the purposes of the surcharge using a test other than the existing SRT.

2.16 A significant number of respondents advocated in favour of a threshold, under which minor non-UK resident interests would be disregarded for the purposes of the surcharge. A smaller number were in favour an apportionment test that would restrict the amount of the surcharge payable to reflect the proportion of non-UK resident interests in the partnership.

Government response

2.17 The government will legislate for the surcharge to apply to partnerships as set out in the consultation. It is usual practice within SDLT to treat partners as joint purchasers of a property and for joint purchaser rules to apply irrespective of the relative interests being purchased by different partners.

Trusts

2.18 SDLT rules for acquisitions by trusts vary depending on the type of trust and the nature of the property being acquired. The government proposed that the surcharge will supplement existing trust provisions. As such, where a bare trust purchases a property, the residence of that beneficiary will then determine whether the surcharge applies. Conversely, where the transaction involves a trust other than a bare trust, liability to the surcharge will be determined by the residence of the trustees.

2.19 An exclusion to this principle was proposed in line with the rules that apply in relation to trusts for the purposes of determining liability to the SDLT higher rates for additional dwellings. Applying those rules to the surcharge would mean that where a beneficiary were entitled occupy the property for life or to the income earned in respect of the property, the application of the surcharge would be determined with reference to the beneficiary's residence status even if the Trust is liable to pay any SDLT due.

2.20 For beneficiaries, residence would follow the proposed residence test for individuals set out in the previous chapter. For trustees, the consultation document set out the government's intention for residence to be determined by reference to the existing SRT used for Income Tax and Capital Gains Tax purposes. Where however, the SRT currently operates with respect to tax years, the government proposed that the SRT would be modified and used with respect to the 12-month periods ending with the date of the transaction instead of tax years.

2.21 Around half of respondents agreed that, given the existing SDLT treatment of trusts, the proposed look-through treatment of acquisitions by trusts was sensible. Others expressed concern over the proposed application of the SRT to trustees, arguing that it would add significant complexity.

2.22 Two respondents noted that while the proposals were consistent with how SDLT is applied to trusts generally, the surcharge would affect pension funds investing in the build-to-rent sector through Jersey unit trusts and similar vehicles and recommend introducing exemptions for investment in build-to-rent properties.

Government response

2.23 The government recognises that the consultation proposals on the residence of trusts could have created additional complexities, contrary to its original intention. Accordingly, the Government proposes simplifying residence test for trusts so that rather than using a modified version of the existing Income Tax and Capital Gains Tax tests, the residence status of a trustee is 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.

2.24 The government's proposals on the availability of reliefs from the surcharge, including in the build-to-rent sector, are covered below.

Chapter 3

Reliefs from and Refunds of the Surcharge

3.1 As set out in the initial consultation, the government proposes that reliefs and refunds of the surcharge will be available in a limited number of circumstances to ensure that the surcharge is applied in a manner consistent with the policy intention of making house prices more affordable to help people onto the housing ladder. Existing SDLT reliefs are addressed in chapter 4.

Reliefs from the Surcharge

Consultation proposals and responses received

3.2 For companies, partnerships and trusts, the government saw no instances in which a relief would fit with the policy objective of the surcharge. For individuals, the government proposed providing an upfront relief for Crown employees who would be defined as non-UK resident under the proposed residence test for individuals because of their deployment overseas.

3.3 Around three-quarters of respondents to the government's consultation agreed with the principle of providing relief from the surcharge for Crown employees. A smaller number argued that such relief should be extended to private sector employees on placement abroad who purchase residential property in England or Northern Ireland and are UK resident for Income Tax purposes under the SRT.

3.4 Several respondents argued that relief from the surcharge should be provided for non-UK resident purchasers buying off-plan to reflect their role in the development funding process, for build-to-rent developers, and for those who are currently relieved of the Annual Tax on Enveloped Dwellings (ATED) and / or the flat 15% rate of SDLT on purchases over £500,000, such as those who let a property commercially.

3.5 A handful of respondents favoured a threshold for the surcharge below which the surcharge does not apply. It was argued a threshold would help remove cash-flow problems from some buyers who would otherwise have to wait for a refund of the surcharge after they have become UK resident.

Government response

3.6 The government will provide a relief for Crown employees where the Crown employee is subject to UK Income Tax. The application of the Income Tax legislation for crown employees places them in a materially different position to other Income Tax payers, making it appropriate for the government to provide a relief for this category of taxpayer. The relief will also extend to spouses and civil partners of Crown employees who are living together overseas.

3.7 For the reasons set out in paragraph 1.10, the government will not adapt the residence test for the surcharge so that those who intend to be UK resident under the SRT in the year of transaction are relieved or exempted from the surcharge.

3.8 The government is not minded to provide relief for 'off-plan purchases' and properties in the build-to-rent sector. Neither will the government provide reliefs based on those that already exist in the Annual Tax on Enveloped Dwellings or the flat 15% rate of SDLT on certain purchases over £500,000. The government does not believe that any reliefs would be compatible with the overall policy objective of making house prices more affordable. It was noted by several respondents to the consultation that purchases by non-UK residents are based on multiple factors, such as exchange rates and the global property market, alongside any SDLT due.

3.9 As set out in the original consultation, the surcharge will apply on top of all current rates of SDLT, including the current nil-rate band.

Refunds of the Surcharge

Consultation proposals and responses received

3.10 It is not the government's intention for the surcharge to act as a barrier to anybody coming to live and work in the UK. As such, the government initially proposed that individuals within scope of the surcharge would be eligible for a refund where they spent 183 days or more in the UK in the 12 months following the day of the transaction.

3.11 The government also proposed that refunds would be available in certain instances (for example alternative property finance agreements) where the residence status of an individual other than the purchaser was used to determine whether the surcharge applied. Apart from those instances, purchases involving non-UK resident companies would not be entitled to claim a refund.

3.12 Some respondents felt that the proposed refund system was unfair in so far as it would fail, in many instances, to reflect the time spent by a non-UK resident in the UK prior to the purchase that triggered liability for the surcharge. It was particularly noted that an individual could just fall short of both the up-front and refund residence tests, despite having spent a significant amount of time in the UK.

3.13 As set out above, several respondents expressed concern about the potential for individual purchasers to be deemed simultaneously UK resident for SRT purposes while non-UK resident for the purposes of the surcharge. It was therefore requested that if the SRT should be used when judging the availability of a refund.

Government response

3.14 In recognition of the concerns respondents to the consultation raised about the availability of a refund from the surcharge, the government will adapt the proposed test so that a refund will be available if individuals spent 183 days in the UK over any 365-day period, beginning 12 months before transaction and ending 12 months after. This change will help make the refund available to more taxpayers and ensure the refund can be granted earlier than was originally proposed.

3.15 The government judges that this revised refund criteria will ensure that in most cases those who move to the UK following the purchase of a property are able

to receive a refund. Therefore, a refund where an individual who is resident under the SRT in the tax year of the transaction will not be included.

3.16 As set out in the consultation, refunds from the surcharge will not be available for any non-natural persons, except in instances of alternative property financing and certain trust arrangements.

Chapter 4

Existing SDLT Reliefs and the Surcharge

Consultation proposals and responses received

4.1 One of the government's principles for the surcharge is that it will apply on top of existing SDLT legislation. That being the case, the government proposed that where a transaction currently qualifies for a relief, the same purchase by a non-UK resident would continue to qualify.

4.2 Most respondents were happy to see that the existing reliefs were not discarded when the surcharge applied and welcomed the proposed interaction between the charge and existing SDLT reliefs.

4.3 Respondents who commented on the proposed interaction between the surcharge and existing reliefs focused largely on two areas, collective enfranchisement arrangements and first-time buyers' relief.

4.4 On collective enfranchisement arrangements, respondents felt that the proposed application of the surcharge to the entire transaction, where only one purchaser was non-UK resident, was unfair, with a number proposing that application of the surcharge should instead be pro-rated to reflect the extent of non-UK resident ownership within the group of purchasers.

4.5 In stakeholder meetings and consultation responses, some suggested that the application of the surcharge to purchasers qualifying for first time buyers' relief may create unnecessary burdens given that, as eligibility for the relief is dependent on an individual's intention to use the property as a main residence, most would go on to become UK resident and qualify for a refund.

Government response

4.6 The government does not propose altering the application of the surcharge in relation to collective enfranchisement arrangements or first-time buyers' relief.

4.7 Changing the rules to exempt purchasers where first-time buyers' relief is claimed would place additional pressures on HMRC to establish if an individual benefitting from relief plans to use the property as his/her main residence. All first-time buyers will be able to benefit from a refund of the surcharge under the refund rules set out above.

4.8 The government will continue to work with external stakeholders where appropriate to understand how the current SDLT rules can impact people's decisions to collectively enfranchise.

Chapter 5

Other SDLT Rules and the Surcharge

Consultation proposals and responses received

5.1 As with the preceding chapter on reliefs, the government's guiding principle has been to align the surcharge as closely as possible with existing SDLT legislation.

5.2 For joint purchasers, the consultation set out the government's intention to apply the surcharge where any one of the joint purchasers is non-UK resident under the individual or non-natural persons residence tests. The government proposed that this treatment of joint purchases would also apply to married couples and civil partners where a property is jointly purchased. Unlike, however, the rules that apply for determining liability to the higher rates of SDLT on additional dwellings the consultation document set out the government's intention for the surcharge not to apply where a UK resident purchases on their own and their spouse or civil partner is non-UK resident.

5.3 A large number of respondents considered the proposed rules on joint purchasers to be unfair and distortionary with regard to married couples and couples in civil partnerships. In highlighting the unfairness, many put forward the scenario of a couple buying a house together where one spouse is in the UK, and therefore UK resident, and the other is working abroad, and therefore considered to be non-UK resident, and within scope of the surcharge.

5.4 Some respondents commented on the proposed treatment of multiple dwellings relief and on purchases of six or more dwellings, suggesting that the proposed treatment ran contrary to the stated policy aim.

5.5 A small number of stakeholders expressed concern over the government's proposal in respect of applying the surcharge to linked transactions involving separate but connected persons, where one purchaser is non-UK resident.

Government response

5.6 The government intends to apply the surcharge using existing rules found elsewhere in SDLT, as far as possible.

5.7 The rules for joint purchasers in SDLT, such as in the higher rates on the purchase of additional properties and first-time buyers relief, are well established and ensure available reliefs or extra charges are applied without opportunities for them to be unfairly claimed, in the case of refunds, or avoided, in the case of extra charges like the higher rates.

5.8 In recognition of the concerns raised by stakeholders relating to married couples and civil partners where one is UK resident and the other non-UK resident, the surcharge will not apply where one spouse is resident under the SDLT residence test and where those spouses or civil partners jointly purchase a property. However,

for other joint purchasers, the current joint purchaser rules in SDLT will continue to apply unamended.

5.9 The government will not alter the way in which multiple dwellings relief and the 'six or more' rules work where the surcharge applies. The government has set out that the surcharge will apply on top of existing SDLT rates and use rules found elsewhere in SDLT, and the continued availability of multiple dwellings relief will assist those purchasing multiple residential properties, even where the surcharge applies. The continued treatment of 'six or more' dwellings as a non-residential transaction reflects the long-standing treatment by the government of these transactions as being commercial in nature and therefore subject to the non-residential rates of SDLT.

Chapter 6

Administration of and Compliance with the Surcharge

Consultation proposals and responses received

6.1 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.

6.2 Where a purchaser subject to the surcharge subsequently becomes eligible for a refund, the consultation set out the government's intention for the customer to claim the refund via an amendment to their land transaction return. The consultation also proposed extending by 12 months the ability of the customer to make that amendment. In practice this means that purchasers will have 24 months from the statutory filing date to amend a return and secure a refund.

6.3 While supportive of the proposed extension for the time within which an SDLT return can be amended, several conveyancers expressed concern over the administrative burden they felt the charge would impose on them. Several commented on the complexity and burden that conveyancers would face in establishing whether or not a client is liable to the surcharge, specifically the need to scrutinise all clients involved in the transaction and the need to seek further evidential documentation in addition to that already required for the purposes of establishing a client's eligibility for first time buyers' relief or liability to the higher rates on additional dwellings.

6.4 A number of respondents felt that HMRC should publish detailed guidance on the evidence required for individuals to prove the number of days they were in the UK, and that transitional provisions should be put in place so that transactions currently in progress will not be affected by the surcharge.

Government response

6.5 The government believes the administrative arrangements for filing returns as set out in the consultation are adequate for the purposes of the surcharge.

6.6 HMRC will publish guidance for taxpayers and agents in advance of the surcharge coming into effect. This guidance will include the information taxpayers and agents will be able to use to demonstrate their residence status as well as guidance on providing new information as a result of changes made to the SDLT Return form.

6.7 The government notes respondents' concerns about transactions in progress and intends to provide transitional arrangements based upon those used for SDLT changes made in 2016. Broadly, transactions will not be subject to the surcharge where contracts were exchanged on or before 10 March 2020 but are not completed or substantially performed until 1 April 2021 or thereafter. But the

transitional arrangements will not apply, and transactions will be liable to the surcharge, where:

- There is any variation in the contract, or an assignment of rights under the contract on or after 11 March 2020, or
- The transaction takes place as a result of the exercise of any option, right of pre-emption or similar right that takes place on or after 11 March 2020, or
- On or after 11 March 2020, there is an assignment, sub-sale or other transaction relating to the whole or part of the property so that someone else other than the original purchaser under the contract becomes entitled to call for a conveyance of the property

Annex A

Consultation Respondents

Ashgrove Homes

Ashurst LLP

The Association of Accounting Technicians

The Association of Real Estate Funds

The Association of Tax Technicians

Bartons Solicitors

Battersea Power Station Development

BDO LLP

Berkeley Homes

Blick Rothenberg LLP

British Property Federation

The Chartered Institute of Taxation

Cripps, Pemberton, Greenish LLP

Deloitte LLP

EY LLP

Forsters LLP

Grant Thornton UK LLP

Home Builders Federation

The Institute of Chartered Accountants of England and Wales

The Institute of Chartered Accountants of Scotland

Intergenerational Foundation

Jersey Finance Ltd.

Kaye & Carey Estate Agents

Kingston Smith LLP

Knight Frank

KPMG LLP

The Law Society

London First

Ludgrove Property

M&G Real Estate
Macfarlanes LLP
Mayor of London
McDermott, Will and Emery LLP
NAEA Propertymark
Northern Ireland Co-Ownership Housing Association Ltd
Penningtons Manches LLP
PWC LLP
Royal Institute of Chartered Surveyors
Shoosmiths LLP
Stamp Taxes Practitioners Group
The Society of Licenced Conveyancers
STEP – Advising Families Across Generations
Unite Students

