

## Clause 1 and Schedule 1: SDLT: increased rates for non-resident transactions

### Summary

1. This clause and Schedule introduce a 2% Stamp Duty Land Tax (SDLT) surcharge on purchases of dwellings made by non-resident purchasers, including certain UK-resident companies controlled by non-residents. It applies to purchases of dwellings in England and Northern Ireland with an effective date on or after 1 April 2021.

### Details of the clause

2. Clause 1 introduces Schedule 1 which makes provision for increased rates of SDLT in relation to non-resident transactions.

### Details of the Schedule

3. Paragraph 1 introduces amendments to Part 4 (Stamp Duty Land Tax) of the Finance Act (FA) 2003.
4. Paragraph 2 inserts new section 75ZA into Part 4 of FA 2003, which provides for additional tax to be charged in respect of non-resident transactions.
5. Subsection 1 of new section 75ZA explains that land transactions which are non-resident transactions will be charged to SDLT with an additional 2% added to the rates provisions specified at subsection 2 of new section 75ZA.
6. Subsection 2 of new section 75ZA sets out the rate provisions that may be subject to the 2% surcharge where the land transaction is a non-resident transaction.
7. Subsection 3 of new section 75ZA explains “non-resident transaction” is defined in new Schedule 9A to FA 2003.
8. Paragraph 3 inserts a new cross heading after new section 75ZA and immediately before section 75A of FA 2003.
9. Paragraph 4 amends section 101 of FA 2003 so the rules in that section which treat the trustees of a unit trust scheme as a company, and the rights of unit holders as shares in that company do not apply to new Schedule 9A. This ensures that the residence position of the trustees of the unit trust scheme is considered when determining whether the transaction is a non-resident transaction.
10. Paragraph 5 inserts new Schedule 9A into FA 2003 which sets out the rules for determining whether a land transaction is a non-resident transaction and therefore

liable to the increased SDLT rates.

11. Paragraph 1 of new Schedule 9A sets out the arrangement of the Parts in new Schedule 9A.
12. Paragraph 2 of new Schedule 9A defines “non-resident transaction”.
13. Paragraph 2(1) of new Schedule 9A sets out the main rules for determining whether a land transaction is a non-resident transaction. This will be where:
  - One or more purchasers is non-resident,
  - The property or land being acquired in the land transaction is a major interest in one or more dwellings,
  - The major interest being acquired is not a lease with 21 years or less to run at the date of transaction or is not subject to a relevant inferior interest, and
  - The chargeable consideration for the transaction is £40,000 or more.
14. Paragraph 2(2) of new Schedule 9A contains definitions relating to terms “major interest” and “relevant inferior interest” used in paragraph 2(1) of new Schedule 9A.
15. Paragraphs 2(3) and (4) of new Schedule 9A explain that special rules apply in respect of bare trusts which are purchasing a newly granted lease, in respect of certain types of settlements, and in relation to contracts which are substantially performed and subsequently completed.
16. Paragraph 3 of new Schedule 9A explains an individual purchaser must consider the tests at paragraphs 4 and 5 of new Schedule 9A to determine their residence status for a transaction.
17. Paragraph 4 of new Schedule 9A contains the main rules for determining whether an individual is UK resident in relation to a transaction.
18. Paragraphs 4(1) and (2) of new Schedule 9A state that an individual will be UK resident where they are present in the UK for at least 183 days during any continuous 365-day period in the “relevant period”. The “relevant period” begins 364 days before the effective date of the transaction and ends 365 days after that date.
19. Paragraph 4(3) of new Schedule 9A provides the special rules for individuals in paragraph 5 of new Schedule 9A take precedence over the main rules in paragraph 4 of new Schedule 9A.
20. Paragraph 4(4) of new Schedule 9A explains an individual will be present in the UK for a day if they are situated in the UK at the end of that day.
21. Paragraph 4(5) of new Schedule 9A states that special rules apply where spouses or civil partners are joint purchasers in relation to a transaction.
22. Paragraph 5 of new Schedule 9A contains the special rules for determining whether

an individual is UK resident in relation to a transaction.

23. Paragraph 5(1) of new Schedule 9A states that an individual will be UK resident if they are present in the UK for at least 183 days during the period beginning 364 days before the date of transaction and ending on the date of transaction. This is subject to the special rules set out in paragraph 5(2) of new Schedule 9A applying.
24. Paragraph 5(2) to (5) of new Schedule 9A explains the special rules apply where any of the following are met:
  - The purchaser is or includes a company or a person acting as the trustee of a unit trust scheme.
  - The purchaser is or includes a partner who enters into a transaction on behalf of the partnership of which they are a member.
  - The purchaser is or includes the trustee of a settlement but only where the beneficiaries of that settlement have neither a life interest in the dwelling acquired nor an entitlement to income from that dwelling.
25. Paragraph 5(6) of new Schedule 9A explains an individual will be present in the UK for a day if they are situated in the UK at the end of that day.
26. Paragraph 5(7) of new Schedule 9A states that special rules apply where spouses or civil partners are joint purchasers in relation to a transaction.
27. Paragraph 6 of new Schedule 9A modifies the tests at paragraphs 4 and 5 of new Schedule 9A for individuals who are Crown employees and for the spouses or civil partners of such individuals.
28. Paragraphs 6(1) and (2) of new Schedule 9A explain an individual (together with their spouse or civil partner with whom they are living) will be treated as being present in the UK on a day where they are in Crown employment and are situated outside of the UK for the purposes of that employment.
29. Paragraph 6(3) of new Schedule 9A requires that the special treatment for Crown employees and their spouses or civil partners must be claimed on a land transaction return.
30. Paragraphs 6(4) and (5) of new Schedule 9A define “Crown employment” and “living together”.
31. Paragraph 7 of new Schedule 9A sets out rules for determining whether a company is non-resident in relation to a transaction.
32. Paragraphs 7(1) to (3) of new Schedule 9A state a company will be non-resident where the company is not UK resident for Corporation Tax under Chapter 3 of Part 2 of the Corporation Tax Act (CTA) 2009, or where the company is resident under Chapter 3 of Part 2 of CTA 2009, and:
  - Is a close company under paragraph 8 of new Schedule 9A, and

- Meets the non-UK control test at under paragraphs 9 and 10 of new Schedule 9A (so that it is a close company controlled by reference to non-resident participators only), and
  - Is not specifically exempted from the second condition under paragraph 11 of new Schedule 9A.
33. Paragraph 7(4) of new Schedule 9A explains special rules apply where the purchaser is a Co-Ownership Authorised Contractual Scheme (CoACS) or where alternative property finance relief is being claimed.
34. Paragraph 8 of new Schedule 9A defines “close company” for the purposes of new Schedule 9A. “Close company” is defined as having the meaning given by Chapter 2 of Part 10 of the Corporation Tax Act (CTA) 2010, subject to the omission of Condition A at sections 444, and of 446 of that Act.
35. Paragraph 9 of new Schedule 9A sets out the “non-UK control test” referenced at paragraph 7(3) of new Schedule 9A.
36. Paragraph 9(1) of new Schedule 9A states a company will meet the non-UK control test where it is a close company within the meaning given by Chapter 2 of Part 10 of CTA 2010, subject to modifications contained within paragraphs 9(2) to (4) of new Schedule 9A.
37. Paragraph 9(2) of new Schedule 9A modifies the application of section 439 of CTA 2010 so that:
- Only non-resident participators are taken into account for either of the tests within section 439, and
  - References to 5 or fewer participators in both tests at section 439 are removed.
38. Paragraphs 9(3) and (4) of new Schedule 9A omit Condition A at section 444, and section 446 of CTA 2010 when determining whether a company is a close company under the non-UK control test.
39. Paragraph 9(5) of new Schedule 9A modifies the application of section 451 of CTA 2010 when determining whether a company is a close company under non-UK control test.
40. Paragraph 10 of new Schedule 9A lists the modifications referenced at paragraph 9(5) of new Schedule 9A.
41. Paragraph 10(1) of new Schedule 9A explains that the modifications limit the attribution provisions in section 451 of CTA 2010.
42. Paragraphs 10(2) and (3) of new Schedule 9A provide for a modification to the attribution rules in relation to business partners and to spouses and civil partners.
43. Paragraphs 10(4) and (5) of new Schedule 9A provide that certain rights and

entitlements held by a participator may not be attributed to another person.

44. Paragraph 10(6) of new Schedule 9A excludes the rights of loan creditors when considering the whether rights to distributable income are de minimis for the purposes of paragraph 5(c) of new schedule 9A.
45. Paragraph 10(7) of new Schedule 9A defines “living together” for the purposes of paragraph 10(3) of new Schedule 9A.
46. Paragraph 11 of new Schedule 9A defines “excluded company” for the purposes of paragraph 7(3)(c) of new Schedule 9A so that companies do not need to apply the second residence condition under paragraph 7(3) of new Schedule 9A where they are an Open Ended Investment Company, or are a UK Real Estate Investment Trust (REIT) (including members of a UK REIT).
47. Paragraph 12 of new Schedule 9A sets out special rules which to apply to paragraphs 4, 5 and 10(3) of new Schedule 9A.
48. Paragraphs 12(1) and (2) of new Schedule 9A explain the special rules apply where two or more purchasers acquire a property and:
  - They are spouses or civil partners of one another,
  - Who are living together, and
  - One of them is UK resident and one of them is non-resident, and
  - Neither of them are acting as the trustee of a settlement.
49. Paragraph 12(3) of new Schedule 9A states that where the special rules apply, the non-resident spouse or civil partner is treated as being UK resident in relation to the transaction.
50. Paragraph 12(4) of new Schedule 9A defines “living together” for the purposes of paragraph 12(2) of new Schedule 9A.
51. Paragraph 13 of new Schedule 9A sets out special rules which apply where the purchaser is a bare trust acquiring a newly granted lease.
52. Paragraphs 13(1) and (2) of new Schedule 9A explain the special rules will apply where the purchaser includes a bare trustee so that the residence position of the beneficiaries is considered rather than that of the bare trustee when determining whether the transaction is a non-resident transaction.
53. Paragraph 14 of new Schedule 9A sets out special rules which apply where the purchaser is acting as the trustee of a settlement.
54. Paragraphs 14(1) and (2) of new Schedule 9A explain that special rules apply where the purchaser includes a trustee of a settlement and under the terms of the settlement, one or more of the beneficiaries of that settlement have either a life interest in the dwelling acquired or an entitlement to income from that dwelling. In that case, the residence position of the beneficiaries is considered rather than that of the trustees of

the settlement when determining whether the transaction is a non-resident transaction.

55. Paragraph 14(3) of new Schedule 9A provides for the special rules not to apply in cases where settlement is a unit trust scheme.
56. Paragraph 15 of new Schedule 9A explains that a CoACS is UK resident in relation to the Schedule but that certain collective investment schemes which are treated as CoACSs under section 102A of FA 2003 (EEA equivalent schemes) are non-resident in relation to the Schedule.
57. Paragraph 16 of new Schedule 9A explains that where the purchaser is a financial institution claiming alternative finance relief under section 71A of FA 2003, liability to the surcharge will be determined by applying the tests at paragraphs 4 to 7 of new Schedule 9A to the person mentioned in section 71A(1) of FA 2003.
58. Paragraph 17 of new Schedule 9A explains that where a contract for a land transaction is substantially performed and then completed, the liability of the purchaser to the surcharge in respect of the second of those transactions will be determined in accordance with their residence status at the effective date of the first transaction.
59. Paragraph 18 of new Schedule 9A states that where an individual purchaser's residence is determined in accordance with paragraph 4 of new Schedule 9A, and where they are not UK resident at the point they submit their land transaction return, they must complete that return and pay SDLT on the basis that they are non-resident.
60. Paragraph 19 of new Schedule 9A contains provisions relating to the repayment of the surcharge in respect of individuals who become UK-resident after submitting their land transaction return.
61. Paragraph 19(1) of new Schedule 9A provides that where a land transaction return is submitted on the basis that one or more individual purchasers are non-resident but all of those individuals subsequently satisfy the test at paragraph 4(1) of new Schedule 9A they may amend their land transaction return.
62. Paragraph 19(2) of new Schedule 9A states purchasers have up to 2 years from the date of transaction to amend their return to take account of the fact that the transaction is not a non-resident transaction.
63. Paragraph 19(3) of new Schedule 9A omits the requirement for certain documents to be provided with the amendment under paragraph 6(2A) of Schedule 10 to FA 2003.
64. Paragraph 20 of new Schedule 9A defines "dwelling" for the purposes of the Schedule.
65. Paragraph 20(2) of new Schedule 9A states a building or part of a building is a dwelling if it is used as such, or is suitable to be used as such. This includes where it is in the process of being constructed or adapted for use as a dwelling.
66. Paragraph 20(3) of new Schedule 9A explains that land that is, or is to be, occupied or

enjoyed with a dwelling as a garden or grounds is part of that dwelling.

67. Paragraph 20(4) of new Schedule 9A explains that land which subsists, or is or is to subsist for the benefit of, a dwelling is part of that dwelling.
68. Paragraph 20(5) of new Schedule 9A explains that a land transaction will include a dwelling where:
- The land transaction is effected through the substantial performance of a contract,
  - The transaction includes a building or part of a building that is to be constructed or adapted for use as a dwelling, and
  - Construction or adaptation has yet to commence at the time the contract is substantially performed.
69. Paragraph 20(6) of new Schedule 9A defines certain terms used in paragraph 20(5) of new Schedule 9A.
70. Paragraphs 20(7) and (8) of new Schedule 9A ensure that the rules around what constitutes a dwelling at sections 116(2) and (3) of FA 2003 do not apply for the purposes of this Schedule.
71. Paragraph 21 of new Schedule 9A provides definitions of certain terms used in new Schedule 9A.
72. Paragraph 22 of new Schedule 9A gives HM Treasury the power to modify the Schedule in certain circumstances by regulation.
73. Paragraph 6 sets out the commencement provisions for this Schedule.
74. Sub-paragraph 1 explains that the surcharge will apply to land transactions with an effective date on or after 1 April 2021.
75. Sub-paragraph 2 sets out that the surcharge will not apply to land transactions with an effective date on or after 1 April 2021 in two situations:
- Situation 1 applies where the contract for the land transaction is entered into and substantially performed under section 44 of FA 2003 before 1 April 2021 but completes on or after 1 April 2021.
  - Situation 2 applies where the contract for the land transaction is entered into before 11 March 2020 but is not substantially performed or does not complete until 1 April 2021 or later, subject to sub-paragraph 3.
76. Sub-paragraph 3 explains that the exclusion in situation 2 will not apply in the following circumstances:
- Where the contract entered into is subject to a variation or assignment of rights which takes place on or after 11 March 2020,

- Where the land transaction takes place on or after 11 March 2020 because of an option, right of pre-emption or similar right being exercised, or
- Where the contract entered into is subject to an assignment, subsale or other transaction which takes place on or after 11 March 2020, and which results in another person becoming entitled to call for a conveyance of the property.

77. Sub-paragraph 4 provides that the “commencement date” is 1 April 2021

## Background note

78. SDLT is a transaction tax which applies to acquisitions of an interest (usually a freehold or a leasehold interest) in land in England and Northern Ireland. Land transaction taxes in Scotland and Wales are devolved to the Scottish and Welsh governments respectively. The purchaser (that is, the person acquiring the interest) is liable to pay the tax.
79. SDLT is charged on the “chargeable consideration” for the transaction (which is usually the purchase price for the property) with the rate of tax payable determined by several factors, including the type of property purchased and the status of the purchaser.
80. At present, purchasers of residential property located in England and Northern Ireland pay SDLT irrespective of where they live or their residence status.
81. The government announced at Budget 2018 that it intended to increase the amount of SDLT payable by non-UK residents when purchasing residential property in England and Northern Ireland.
82. On 11 February 2019, the government commenced a consultation on its proposals and published its “Stamp Duty Land Tax: non-UK resident surcharge consultation”, which explored options for implementing a surcharge on non-UK resident purchasers. The consultation ran until 6 May 2019.
83. On 21 July 2020, the government published a response to its consultation “Non-UK Resident Stamp Duty Land Tax Surcharge: Summary of Responses”, confirming its proposals in respect of the surcharge. This clause and Schedule give effect to those proposals, which are intended to help make house prices more affordable, helping people get onto and move up the housing ladder in line with wider objectives on homeownership. The revenue raised will be used to tackle rough sleeping.
84. If you have any questions about this change, or comments on the legislation, please contact the HMRC Stamp Taxes team at [stamptaxes.budgetfinancebill@hmrc.gov.uk](mailto:stamptaxes.budgetfinancebill@hmrc.gov.uk).