

SDLT: Additional 2% rate for non-UK resident Purchases of residential property from 1 April 2021

What's the change?

As part of Rishi Sunak's 2020 Spring Budget the government confirmed that non-UK resident purchasers of English and Northern Irish residential property will be subject to an increased rate of SDLT where the effective date of the purchase is on or after 1 April 2021.

When does the Non-UK Resident Charge apply?

This is now set out in draft legislation which is open for consultation until 15 September 2020 and the final contents of the Bill will be subject to confirmation in the Budget this autumn. The detailed provisions are set out in a new Schedule 94 to be inserted into Finance Act 2003 and include the new concept of a non-resident transaction. A non-resident transaction is a purchase (for more than £40,000) of a major interest in land, where the purchaser is (or, if there is more than one purchaser, includes) a person who is non-resident. The definition is similar to that used for the additional 3% surcharge for SDLT and excludes leases with 21 years or less to run and major interests subject to such a lease.

How does it vary for Individuals and Companies?

The residence test applies in a different way to different types of taxpayer.

For Individuals – It is based on days present in the UK and an individual resident in the UK for 183 days (at the end of the day) during a continuous 365 day period falling within the period starting 364 days before the effective date and ending 365 days after, will be resident for this purpose (with special rules applying to spouses and civil partners). There is, therefore, facility to reclaim SDLT where an individual becomes resident after a purchase.

For Companies – Residence is generally applied by reference to the residence rules for Corporation Tax although certain UK resident companies may be treated as non-UK resident for these purposes. The residence of some UK resident close companies, for example, may be determined by reference to the residence of controlling participators.

The rules are quite complex generally with regard to close companies under the direct or indirect control of non-residents to prevent avoidance schemes seeking to route purchases through a UK vehicle and avoid the surcharge.

Other Entities – There are special rules for partnerships, trustees, unit trusts, REITs and certain collective investment schemes.

What will be the top rate of the SDLT Surcharge?

The non-UK resident SDLT surcharge will apply at a rate of 2% above the residential rates (including the higher rates for additional dwellings and companies, the 15% rate and the first time buyer's rates) on residential property bought by non-residents.

This would be in addition to the existing 3% higher rates surcharge which most non-residents already pay because they already own one or more residential properties overseas. So, SDLT for overseas purchasers will be at a top rate of 17% of the purchase price.

This will be either a flat rate of 17% in the case of companies buying a dwelling which would already be subject to the 15% higher rate or, in other cases, on the top slice of the purchase price above £1.5m.

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