

Briefing document

Stamp Duty Land Tax: Non-UK resident surcharge

Introduction

The Stamp Duty Land Tax (“**SDLT**”) surcharge on non-UK residents purchasing residential property in England and Northern Ireland (the “**NR Surcharge**”) was announced at Budget 2018. Last year, it was confirmed that the rate of the surcharge will be 2% and that it will come into effect from 1 April 2021. No material changes to the introduction of the surcharge were announced in this year’s Budget. The surcharge applies to SDLT only for the time being, so will not apply to acquisitions of residential property in Scotland or Wales. However, it should be noted that the existing surcharge on second homes and rental properties (the “**Additional Dwellings Surcharge**”) has now been increased from 3% to 4% in both Scotland and Wales. The Additional Dwellings Surcharge currently remains at 3% for SDLT.

The NR Surcharge will apply to the whole of the purchase price by adding the additional 2% to each of the existing residential SDLT rates and will also apply to increase the rate of SDLT paid by reference to the rent payable under a lease of residential property of more than 7 years, as well as on any premium.

Overview

The introduction of the NR Surcharge will now take effect whilst the temporary reduced SDLT rates are still in place as the ‘SDLT holiday’ has been extended until the end of September 2021 with a tapering of the nil rate threshold. These reduced rates for SDLT, which apply a nil rate threshold of £500k, will come to an end on 30 June 2021. For transactions taking place on or after 1 July 2021, the nil rate thresholds for SDLT will be reduced from £500k to £250k until 30 September and will then revert back to the usual £125k from 1 October 2021.

Acquisitions by individuals

An individual will be treated as ‘non-UK resident’ for the purposes of the NR Surcharge if they spend fewer than 183 days in the UK in any continuous period of 365 days beginning 12 months before the transaction occurs and ending 12 months after the transaction occurs. A person will be deemed to have spent a day in the UK if they are here at the end of a day (midnight). This test will look at the total amount of days spent in the UK, not just in England or Northern Ireland.

Where an individual, who has been subject to the NR Surcharge, spends 183 days or more in the UK in any continuous period of 365 days beginning 12 months before the transaction and ending 12 months after the effective date of the transaction, they will be eligible for a refund of the surcharge. This means that employees returning from secondment abroad or people taking up employment in the UK might have to pay the NR Surcharge initially (even if they are first-time buyers) but may then be able to reclaim the surcharge once they satisfy the 183 day test.

Relief from the NR Surcharge will be available for all those non-UK residents who are Crown employees subject to UK income tax (e.g. for members of the armed forces, diplomats and civil servants on overseas postings if they are purchasing residential property in England and Northern Ireland). No other specific reliefs or exemptions are proposed for individuals.

Joint purchasers

Where property is purchased jointly, if any of those purchasers are non-resident, the NR Surcharge will apply to the whole acquisition. There will be an exception to this rule in respect of a joint purchase made by a married couple, or by civil partners, where one of the parties to the transaction is not treated as being UK resident for the purposes of the surcharge. The only other exception to this is for charities buying as tenants in common.

Acquisitions by non-resident persons other than individuals

The NR Surcharge may also apply to acquisitions by non-resident persons other than individuals, such as non-resident companies, partnerships and trusts. In addition, in some circumstances the NR Surcharge can also apply to UK resident entities where relevant owners, partners or beneficiaries are non-resident.

Examples of the NR Surcharge (and the Additional Dwellings Surcharge) impacting the tax liability

The table below illustrates the impact of an individual acquiring residential property in England and Northern Ireland up to and including 30 June 2021 where they are subject to the basic SDLT charge only, the basic charge plus the NR Surcharge and the basic charge, NR Surcharge plus the 3% Additional Dwellings Surcharge.

SDLT on residential property until 30 June 2021			
Property price	Basic charge	Basic charge plus NR Surcharge (from 1 April 2021)	Total payable if Additional Dwellings Surcharge also applies
£248,000	£0.00	£4,960.00	£12,400.00
£485,000	£0.00	£9,700.00	£24,250.00
£750,000	£12,500.00	£27,500.00	£50,000.00
£2,000,000	£138,750.00	£178,750.00	£238,750.00

And then comparing that with SDLT which would be due on the same transactions from 1 July 2021 to 30 September 2021:

SDLT on residential property 1 July 2021 to 30 September 2021			
Property price	Basic charge	Basic charge plus NR Surcharge	Total payable if Additional Dwellings Surcharge also applies
£248,000	£0.00	£4,960.00	£12,400.00
£485,000	£11,750.00	£21,450.00	£36,000.00
£750,000	£25,000.00	£40,000.00	£62,500.00
£2,000,000	£151,250.00	£191,250.00	£251,250.00

And then comparing that with SDLT which would be due on the same transactions from 1 October 2021:

SDLT on residential property from 1 October 2021			
Property price	Basic charge	Basic charge plus NR Surcharge	Total payable if Additional Dwellings Surcharge also applies
£248,000	£2,460.00	£7,420.00	£14,860.00
£485,000	£14,250.00	£23,950.00	£38,500.00
£750,000	£27,500.00	£42,500.00	£65,000.00
£2,000,000	£153,750.00	£193,750.00	£253,750.00

An example may bring this to life

An individual ("A") intends on acquiring a UK residential property as their main residence for a value of c.£2m. A lived and worked abroad for many years but returned to live and work in the UK on 31 January 2021. A currently holds a number of other properties abroad and in the UK.

Where A acquires the UK residential property on or after 1 April 2021, A will be subject to SDLT at the basic rates, in addition to the Additional Dwellings Surcharge of 3% and the NR Surcharge at 2% as they will own more than one property at the end of the day of purchase, will not be replacing their main residence and will not have spent more than 183 days in the UK by the point of the transaction (albeit they will be UK tax resident and UK domiciled the day they return to the UK). A will therefore incur an SDLT tax liability of c.£240k at the time of the transaction. However, A should be able to reclaim the c.£40k of additional tax paid for the NR Surcharge once the requisite residency condition is met by being present in the UK for 183 days during a continuous period of 365 days within the relevant time period.

Transitional provisions

The NR Surcharge will not apply to transactions where contracts had already been exchanged on or before 10 March 2020. Usual exceptions apply such that a charge will arise if the contract has been, for example, varied or assigned or a sub-sale transaction has been entered into from 11 March 2020. The surcharge will also not generally apply where contracts are substantially performed on 31 March 2021 or earlier but do not complete until 1 April 2021 or later.

Find out more...

This note reflects the law as proposed in the draft legislation released on 3 March 2021. Please be aware that it does not cover all aspects of this subject. The latest guidance around the NR Surcharge can be found [here](#). To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Jonathan Evans (jonatevans@deloitte.co.uk), Jennifer Doyle (jenniferdoyle@deloitte.co.uk) or Sarah Delaney (sadelaney@deloitte.co.uk).

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