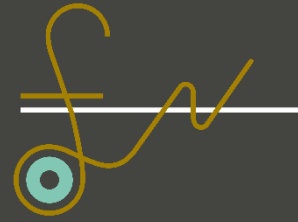


3% SDLT Surcharge



February 2020

Budget 2020: The Real Estate Sector

THE SURCHARGE

3% surcharge for non-resident companies and individuals acquiring residential property in England and Northern Ireland

This announcement – which brings the top rate of SDLT on certain residential property purchases to 18% - follows on from a consultation in February 2019, with the aim of reducing house prices and enabling more people to enter into home ownership. Then, a 1% surcharge charge was proposed for overseas purchasers, who the government believes are inflating house prices. Clearly the 1% rate has been subsequently thought insufficient to achieve this, hence the proposal for a further new 3% rate, instead.

Notably, given that there are separate regimes in Wales and Scotland, the measure announced will apply to England and Northern Ireland only (unless similar measures are announced in Scotland and Wales also).

We do not have any further detail on the latest proposal, so that it is assumed that it would largely follow the original draft consultation in February 2019. We are still awaiting a date of implementation, but it is likely that this will now be announced in the March Budget. How the new surcharge might work – based on those early proposals - is set out below. This is a high level

summary only and it may well be that some of the detail changes as a result of the responses received in the earlier consultation. The precise law should, therefore, be considered once available.

WHO DOES IT APPLY TO?

The new charge was announced to apply to non-UK companies and non-resident individuals. However, it is expected that it will extend also offshore property unit trusts (e.g. the popular JPUT) and to contractual schemes (such as Luxembourg FCPs), which are treated as companies for this purpose and to any other non-UK resident non-natural person. It will also apply to "closely held" UK companies controlled by offshore entities or people and to partnerships with any offshore partner. What is defined as "close" will be reconsidered for this purpose.

Notably, there was no exemption from the charge for non-close or widely held offshore vehicles. There was lobbying that they should be excluded from the surcharge – given that that they do provide housing. In the course of discussions, it transpired that this had been thought about, but the government had not expected them to be impacted by the new charge on the (not always correct) assumption that such entities would be able to get a lower charge by using the six property rule, which means that the (broadly) 5% commercial rate is used. This may prove to be a more accurate assumption given the proposed new rate for the surcharge, but they should still be

exempted from the charge to give parity with their UK equivalent entities and not penalise them, when they still will be providing housing to rent.

EXEMPTIONS

Aimed at non-UK resident companies and individuals, UK companies not controlled or owned by non-UK residents should be outside the scope of the new charge. Likewise, this should be the case for those UK companies that are non-close or widely held (e.g. REITs or other UK funds) regardless of the identity of their owners. The look through test for UK close companies looks unlikely to apply to UK unit trusts and contractual schemes.

The rules will also apply to trusts, which are looked through to the beneficiaries for acquisitions generally and on grants of leases to trustees (not generally look through for SDLT) where two or more leases are being acquired.

Existing provisions relating to the "close company" and "control" definitions for these purposes will be reconsidered.

So all could get quite complicated.

HOW DOES IT WORK?

First, the new rate is proposed to apply to dwellings only.

If there is more than one linked transaction, relevant prices will be added together to find the rate band.

Then, the 3% surcharge would be applied in addition to the existing standard rates, the existing 3% additional rate, the rental element and the rates for first time buyers' relief (as appropriate), across all the rate bands bringing, potentially the top rate of SDLT to 18%. For those acquiring property into an SPV, the rate will be increased to 18% unless a relevant relief (e.g. lettings relief) applies and is claimed.

There are potential tripwires where partnerships acquiring dwelling have one non-UK resident or where property is held jointly with one non-UK resident. This could bring the entire interest into the new charge.

RESIDENTIAL RATES

Premiums			
Band £	Standard %	Additional 3 %	3% Surcharge TBC
0-125k	0	3	6
>125k-£250k	2	5	8
>250k-925k	5	8	11
>925k-1.5k	10	13	16
>1.5k	12	15	18
SPV and dwellings value above £500k (ATED SDLT)	Fixed 15% unless relief claimed	Fixed 15% unless relief claimed	Fixed 18% unless relief claimed

Rent		
NPV £	%	3% surcharge
0-125k	0	3
>125k	1	4

RELIEFS

Importantly existing reliefs will continue to be available, which for appropriate purchasers would mean that the actual rate levied could be less in practice:

- the ability to use commercial rates, if there are 6 or more properties, bringing the rate to (broadly) 5% across the portfolio.
- multiple dwellings relief, which, on a claim being made (where available), by using the average per unit price of permitted dwellings - may produce a lower charge. However, it is unlikely to be so helpful given the new surcharge applies across all the rate bands, so that the six property rule may become more useful in the future, if relevant
- commercial rates for mixed-use property
- first time buyer's relief - though the new rates would apply to this also if the buyer is non-UK resident also (e.g. 3% on first £300k and 8% on the next £200k and the extra surcharge would apply as usual to rates over £500k).
- alternative finance relief

Reliefs:

- Claims from ATED SDLT
- Commercial rates if six or more properties
- Mixed use: commercial rates
- MDR: claim for average unit price
- Charities exemption
- Group relief
- Other exemptions

RENTALS

The new rates will apply to rental also, effectively bringing a new 3% lower rate and 4% rate above £125k.

THE TEST FOR RESIDENCE

As to who is non-resident for this purpose, new rules will be introduced for SDLT.

For individuals, the proposal is for a simplified test based on presence in the UK for 183 days in a 12

month period prior to the date of the transaction. A refund could be claimed of the difference over normal rates applicable (which could include the additional rate), if the person (say someone coming back to the UK or to the UK to work) then became resident in the UK within the following 12 months.

Express rules will be introduced for companies, trusts and contractual schemes, broadly (but not exactly) in line with the UK rules otherwise used.

START DATE

This has yet to be announced, but a fair guess to think Budget Day 2020.

GRANDFATHERING

We would expect the usual grandfathering clause that transactions contracted for before the effective date for implementation of the new rules should be outside the scope (assuming not that contract is not varied, assigned etc).