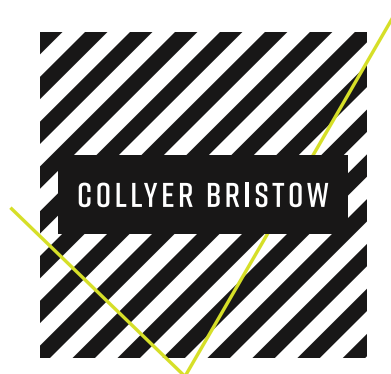


STAMP DUTY LAND TAX NON-RESIDENT BUYERS



PRIVATE **WEALTH**

SDLT: 2% SURCHARGE FOR NON-RESIDENT BUYERS

FROM 1 APRIL 2021, NON-UK RESIDENTS WHO PURCHASE RESIDENTIAL PROPERTY IN ENGLAND AND NORTHERN IRELAND WILL PAY A NEW 2% SURCHARGE ON TOP OF THEIR STAMP DUTY LAND TAX (SDLT) BILL.

This surcharge was announced in the 2018 Budget and confirmed in the Spring 2021 Budget on 3 March 2021. It is intended to combat house price inflation by reducing the number of foreign buyers of UK residential property.

The legislation applying the 2% surcharge is to be found in the Finance Bill 2021, the first draft of which was published on 11 March 2021. This guide offers a general summary of the key aspects of the surcharge, and is based on the draft legislation, which may still be subject to amendment before it becomes law.

I. WHEN DOES THE 2% SURCHARGE APPLY?

The 2% surcharge will apply to transactions that complete on or after 1 April 2021 where:

- the purchase is of residential property, whether freehold or leasehold, in England or Northern Ireland, including where non-residential property is purchased in the same transaction;
- the chargeable consideration paid by the purchaser is more than £40,000.

There are no specific exemptions or reliefs from the 2% surcharge. However, other general reliefs and exemptions (such as multiple dwellings relief) may apply depending on the facts of a particular transaction.

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2. HOW IS IT CALCULATED?

If the surcharge applies, then 2% is added to all applicable rates of SDLT, including to the higher 3% rates for second home purchases and the 15% flat rate for certain purchases by companies of properties worth over £500,000.

This means that, for example, the rates for standard and higher rates transactions (from 1 October 2021 when the current SDLT holiday ends) will be as outlined below.

Consideration	Standard rates with 2% surcharge	Higher rates with 2% surcharge
£125,000 or under	2%	5%
£125,001 to £250,000	4%	7%
£250,001 to £925,000	7%	10%
£925,001 to £1,500,000	12%	15%
Over £1,500,000	14%	17%

"THE COMPLEXITY OF THE LEGISLATION MAKES IT ESSENTIAL THAT PROSPECTIVE BUYERS WHO ARE CONCERNED THAT THEY MAY BE CAUGHT BY THE SURCHARGE SEEK SPECIALIST SDLT ADVICE AT AN EARLY STAGE."

Peter Daniel, Head of Private Wealth

3. HOW IS UK RESIDENCY DETERMINED?

There are a number of residency tests applicable to different types of purchaser:

3.1 INDIVIDUALS

The usual 'statutory residence test' which determines an individual's liability to income tax and capital gains tax is not used for the 2% surcharge. Instead, two new tests have been introduced.

The first test applies where there is one individual purchaser (the basic test). Under the basic test, an individual will be treated as UK resident if they have spent at least 183 days in the UK during any continuous period of 365 days within a window starting one year before the effective date of the transaction (usually the date of completion) and ending one year after. A day will count as spent in the UK if the individual was in the UK at midnight on that day.

Where a non-UK resident spouse of a UK resident individual purchases a property jointly with their UK resident spouse, they will be treated as UK resident and the surcharge will not apply. There is a similar exception for Crown employees and their cohabiting spouses (whether purchasing jointly or individually) who would otherwise be treated as non-resident.

If, on the effective date of the transaction, an individual is non-resident (i.e. they have spent fewer than 183 days in the UK during the previous year) then they must pay the 2% surcharge. If they were to subsequently spend enough days in the UK to satisfy the basic test, then they may amend their SDLT return within two years to reclaim the extra tax paid.

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The second individual residency test (the special test) will apply where the purchaser (or one of them if there is more than one) is:

- a company
- a trustee of a unit trust
- an individual who is a partner entering into the transaction on behalf of the partnership, or
- an individual acting as trustee of a discretionary trust in which no beneficiary has a right to income or to live in the property.

If the special test applies, the individual must still have spent at least 183 days in the UK to be treated as UK resident, but the test is retrospective and so only the year immediately prior to the effective date of the transaction is taken into account.

3.2 COMPANIES

The rules for determining the residence of companies are complex and diverge in some respects from the usual principles applicable to other taxes.

Firstly, a company that is incorporated outside the UK and with its centre of management and control outside the UK will be subject to the surcharge.

In general, UK resident companies will not be subject to the surcharge. However, a UK tax resident company that is a 'close company' controlled by non-UK resident individuals will also be subject to the surcharge. This test was introduced to prevent non-residents from attempting to avoid the surcharge by purchasing property via a UK company.

A close company is, broadly, a company that is controlled by five or fewer participators (generally, shareholders) or by any number of participators who are also directors of the company. The usual close company rules have been modified for the purposes of the 2% surcharge and will require careful analysis on the facts of a given transaction.

A close company will be controlled by non-UK resident participators if its non-resident participators (with residency assessed as set out above for individuals) have or would be entitled to acquire the majority of the company's assets on a winding up or dissolution.

3.3 TRUSTEES

A purchase by bare trustees or by trustees of a life interest or interest in possession settlement then the surcharge will apply if the beneficiary of the bare trust or the life tenant is not UK resident (ignoring the residency status of the trustees).

If the trust is a discretionary one (i.e. where no beneficiary has a right to occupy trust property or to receive trust income), then it is the residency of the trustees that is considered, applying the special test for individuals outlined above.

3.4 PARTNERSHIPS

The general SDLT rule is applied so that if any of the individual partners is non-resident, then the partnership will be treated as non-resident for the purposes of the 2% surcharge.

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4. PRACTICAL POINTS

Non-resident individuals who are looking to purchase UK residential property will need to obtain and retain evidence to verify their residency status. Flight tickets, boarding cards and passport entry stamps will be key in this regard. However, HMRC acknowledges that buyers may not keep contemporaneous records of their location on a day-to-day basis. They have indicated that they will take a pragmatic approach and will consider other evidence when assessing whether an individual was in the UK on a given day, including:

- credit card and bank statements that indicate the place of a buyer's day-to-day expenditure,
- work diaries, planners, timesheets and rosters,

- mobile phone usage and bills indicating a person's location, and
- membership and usage of sports, health or social clubs.

The legislation setting out the 2% surcharge is complex and the adaptations to otherwise familiar concepts, such as the close company rules, will make it difficult to apply, even for experienced professional advisers. It is therefore essential that prospective buyers who are concerned that they may be caught by the surcharge seek specialist SDLT advice at an early stage.

GET IN TOUCH

**PETER DANIEL**

**Partner & Head of Private
Wealth**

+44 20 7468 7351

+44 7879 842645

peter.daniel@

collyerbristow.com

**JANET ARMSTRONG-FOX**

**Partner & Head of Private Client
Property**

+44 20 7468 7221

+44 7720 848807

janet.armstrong-fox@

collyerbristow.com

For more information please visit

COLLYERBRISTOW.COM/PRIVATE-WEALTH

COLLYERBRISTOW.COM  @COLLYER_BRISTOW  COLLYER-BRISTOW-LLP

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