

Stamp Duty Land Tax (SDLT) – Non-Resident Surcharge

Since 1st April 2021, non-UK residents purchasing **residential real estate** in the UK have been subject to a 2% surcharge on all rates of SDLT.

The non-resident surcharge does not apply to purchases of 'non-residential' or 'mixed use' real estate.

SDLT only applies to acquisitions of real estate in England and Northern Ireland. There are different rules applying in Scotland and Wales which are not covered in this briefing note.

What is the scope of the surcharge?

The 2% surcharge applies to all rates of SDLT applicable to acquisitions of UK residential real estate, including:

- the standard residential SDLT rates;
- the higher 3% residential SDLT rates applying to second or subsequent dwellings;
- the first-time buyer residential SDLT rates;
- the higher 15% SDLT rate for non-natural persons (i.e. companies); and
- the SDLT rates that apply to rent.

When does the surcharge apply?

The surcharge applies to all 'non-resident transactions'.

A transaction will be a 'non-resident transaction' where:

- the purchaser (or a purchaser if there are joint purchasers) is non-resident;
- the main subject matter of the transaction consists of a 'major interest' (i.e. a freehold estate or a leasehold estate with more than seven years left to run) in at least one dwelling; and
- the amount or value of the chargeable consideration is at least £40,000.

When is a purchaser 'non-resident'?

There are different rules for individuals, companies, and, trusts which we will examine in turn below. The residency rules for SDLT purposes are not the same as those applying to other UK taxes.

Individuals are treated as 'resident' for SDLT purposes if they are present in the UK at midnight on at least 183 days during any continuous 365-day period that falls within the period of two years which begins 364 days before the effective date of the transaction and ends 365 days after the effective date of the transaction. The effective date of the transaction would normally be the date of 'completion' of the purchase.



If, at the effective date, an individual does not pass the test looking back over the previous 364 days, they would be 'non-resident' and the 2% surcharge would apply regardless of all other considerations.

> *Example 1 – Anita*
> *Anita, who has been living in Belgium for many years, purchases a UK residential property, on 1st September 2022.*
> *During the period from 2nd September 2021 to 1st September 2022, Anita spent 96 days in the UK (less than 183 days).*
> *Anita is therefore non-resident at the point of purchase for SDLT purposes, so the 2% surcharge will apply.*

An individual would cease to be 'non-resident' in relation to a transaction if they pass the test at some point over the subsequent 365 days. In this scenario, the non-resident surcharge can be reclaimed from HMRC (any claim needs to be made within two years of the effective date of the transaction).

> *Example 2 – Anita*
> *The scenario is the same as that above, except that following the purchase of the property, Anita moves back to the UK in October 2022.*
> *She remains in the UK permanently after that date, with the exception of a few weeks away each year on holiday.*
> *Anita therefore spends more than 183 days in the UK in the 365 days following the purchase and as such will become UK resident for SDLT purposes.*
> *Anita will be able to reclaim the 2% surcharge she paid at the time of purchase of the property. This claim will need to be made on or before 1st September 2024.*

An individual's status **cannot**, however, change from 'UK resident' to 'non-resident'. If the individual passes the SDLT residence test on the effective date of the transaction, and the individual's circumstances change afterwards, the 2% surcharge will not apply retrospectively.

Where there are **joint purchasers**, if any of the purchasers are ‘non-resident’ the 2% surcharge will apply to the whole purchase regardless of the residence status of the other purchasers.

This rule for joint purchasers differs where the joint purchasers are spouses or civil partners. In these circumstances an individual is treated as 'UK resident' even if they are not, if:

- they purchase the dwelling jointly with their spouse or civil partner; and
- their spouse or civil partner is 'UK resident'; and
- they and their spouse or civil partner are 'living together' i.e. they are not permanently separated; and
- neither they nor their spouse or civil partner is acting as a trustee of a settlement.



A Company will be 'non-resident' in relation to a chargeable transaction if:

- it is not UK resident for the purposes of corporation tax on the effective date of the transaction; or
- despite being UK resident for the purposes of corporation tax; it is a “close” company, meets the 'non-UK control test', and, is not an 'excluded company'.

A company is UK resident for the purposes of corporation tax if it is incorporated in the UK or if it is centrally managed and controlled in the UK.

Special rules exist for UK resident “close” companies which meet the 'non-UK control test'. This rule is designed to prevent avoidance by non-resident individuals using UK-resident companies to purchase residential real estate in order to avoid the 2% surcharge.

A “close” company is, broadly speaking, any company owned/controlled by five or fewer individuals. In determining whether such companies are UK resident for SDLT purposes, we must apply the residence test for individuals to each of the ‘owners’. If any of the owners are non-resident under the tests, the 2% surcharge will apply to the company.

> *Example 3 – Alpha Properties Limited*
> *Alpha Properties Limited is a company registered in the UK. The company has two director/shareholders, Anita and her husband Andre. Both Anita and Andre have lived in Belgium for many years and neither of them have spent more than 90 days in the UK in the previous three years.*
> *Alpha Properties Limited purchases a residential property in Kensington on 1st September 2022.*
> *At first glance, the 2% surcharge will not apply as Alpha Properties is a UK company, subject to UK corporation tax.*
> *However, because it is a ‘close’ company, i.e. it is controlled by only two individuals, we need to consider the residence of those individuals for SDLT purposes in order to determine whether or not this is a non-resident transaction.*
> *As neither Anita or Andre have spent 183 or more days in the UK in the 365 day period leading up to the purchase of the property by Alpha, they are both non-resident.*
> *Alpha Properties is therefore a non-resident purchaser and will need to pay the 2% surcharge on this purchase.*

For Company purchases, we only look at the residence status at the point of purchase, there is no scope for this to change at a later date.



The rules for Trusts vary depending on the type of trust that is acquiring real estate. The rules for the most common forms of Trust are detailed below.

- Bare trust or nominee: the purchaser is deemed to be the beneficiary or the beneficiaries; hence, the transaction is a non-resident transaction if the beneficiary is, or any of the beneficiaries are, 'non-resident'.

- Life interest trust: the purchaser is deemed to be the life tenant; hence, the transaction is a non-resident transaction if the beneficiary with the life interest is 'non-resident'.

- Discretionary or other type of trust: the purchaser is deemed to be the trustee; hence, the transaction is a non-resident transaction if the trustee is, or any of the trustees are, 'non-resident'.

Recap of the SDLT rates

The various SDLT rates applicable to purchases of UK residential real estate are shown in the tables below:

*Individuals / Trustees / Companies***

Purchase price	Standard SDLT rate		Higher SDLT rate *	
	Resident	Non-resident	Resident	Non-resident
Up to £250,000	0%	2%	3%	5%
£250,001–£925,000	5%	7%	8%	10%
£925,001–£1.5m	10%	12%	13%	15%
£1.5m+	12%	14%	15%	17%

** The higher rate of SDLT applies where the purchaser (or one of the purchasers) will own more than one residential property (anywhere in the world) following the completion of the purchase.*

*** SDLT is charged at 15% (17% if the 2% non-resident surcharge applies) on residential properties costing more than £500,000 bought by certain 'non-natural persons' (i.e. companies). There are exceptions where the purchasing company is using that property in a rental or property development business, in which case the rates in the table above will apply.*



Individuals – First Time Buyers

Purchase price*	SDLT rate on first property (first-time buyer)	
	Resident	Non-resident
Up to £425,000	0%	2%
£425,001–£625,000	5%	7%

** For a purchase price in excess of £625,000, the special first time buyers rates cease to apply. The 'standard' rates above should be used instead.*

How can Verfides help?

Our team of experts is ready to help you with:

- Identifying your residence status for SDLT purposes
- Preparing computations of the SDLT payable for a given real estate acquisition
- All aspects of the taxation of UK real estate ownership, acquisition, disposal and succession planning

Please speak to your usual contact if you have any questions about Stamp Duty Land Tax or email tax_team@verfides.com .

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