

Stamp Duty Land Tax: Non-UK Resident Surcharge

A Consultation Response from NAEA Propertymark

May 2019

Background

1. NAEA Propertymark is the UK's leading professional body for estate agency personnel; representing more than 11,000 offices from across the UK property sector. These include residential and commercial sales and lettings, property management, business transfer, auctioneering and land.
2. NAEA Propertymark is dedicated to the goal of professionalism and by appointing an NAEA Propertymark agent to represent them consumers will receive in return the highest level of integrity and service for all property matters. NAEA Propertymark agents are bound by a vigorously enforced Code of Practice and adhere to professional Rules of Conduct. Failure to do so can result in heavy financial penalties and possible expulsion from the organisation

Executive Summary

- The proposed one per cent Stamp Duty Land Tax (SDLT) surcharge for non-UK residents will have a minimal impact on purchase decisions when compared with existing SDLT charges.
- The proposed surcharge will do little to improve the level of homeownership for UK residents in England and Northern Ireland.
- It must be noted that non-UK resident buyers are often area specific, largely purchasing property in major cities, impact of the policy will be nominal elsewhere.
- The 1% SDLT surcharge will do little in alleviating house price inflation related to foreign investment.
- Private sector employees on a fixed-term secondment overseas should be exempt from the surcharge.
- Overseas investors will be more likely to make use of the choice between the six or more dwellings exemption and Multiple Dwellings Relief, thereby avoiding the top rates of SDLT.

Questions

1. The surcharge for individuals purchasing residential property in England and Northern Ireland

Question 1: Do you have any views on the proposed SDLT residence test for non-UK resident individuals?

3. NAEA Propertymark believes that whilst the residence test appears simple, where the surcharge applies if a purchaser has spent fewer than 183 days in the UK in the 12 months ending the effective date of transaction, the Government needs to provide clear guidance in determining a purchaser's residence status. As noted in the consultation document,¹ the test

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777877/NRSDLT_Consultation_web.pdf

will need to be simple for taxpayers and conveyancers to understand. For this reason, we believe that ahead of the surcharge becoming statutory guidance will be required to guide these parties in what type of evidence will be required by HMRC is establishing the residence status of the purchaser. Further, as the surcharge will apply to the 12 months prior to the effective date of transaction, this gives further reason for the guidance to be provided in advance.

Question 2: Would you prefer to see a different residence test applied? If so, what test and why?

4. NAEA Propertymark is not aware of a more preferable method of determining a purchaser's residence. However, in order to promote the longevity of home ownership of UK nationals we believe that further exemptions need to be included. We discuss these exemptions further in our response to Q19.

Question 3: How will the proposed surcharge on residential properties affect purchase decisions of non-UK resident individuals in England and Northern Ireland?

5. NAEA Propertymark believes that the proposed surcharge on residential properties will not have any significant impact on the purchase decisions of most non-UK residents in England and Northern Ireland. We believe that the surcharge may not necessarily deter a majority of non-UK resident individuals from purchasing UK property, as typically overseas investors purchase high value property, already accruing a high level of SDLT. However, we do acknowledge that the purchase decisions of those at the lower end of the market may be slightly impacted. Furthermore, we would like to note that property purchases by non-UK residents are largely area specific, and thus it is unlikely to impact England and Northern Ireland as an entire geographical area.
6. In March 2019 we surveyed 105 NAEA Propertymark members inviting them to comment on the proposed surcharge.² The sample, containing estate agents from across the UK, found that 77 members either supported the proposed measure or were unsure (Yes: 40, Unsure: 37), the remainder did not support it (No: 28). NAEA Propertymark members report mixed responses in determining whether the proposed surcharge will affect purchase decisions of non-UK residents.
7. We believe that due to many purchases by non-UK residents being high value, often paying the top rate of SDLT, and a further three per cent of SDLT on additional properties, the one per cent surcharge may not have a significant impact. London saw a sharp decrease in overseas landlords from 26 per cent to 11 per cent from 2010 to 2017, which has been attributed to tax changes.³ Property purchases of £1.5million and above pay 12 per cent of SDLT, with additional properties accruing an extra three per cent. Considering this, an extra one per cent of SDLT is not hugely significant. For reference, property advisors London Central Portfolio reported that the average price of prime central London property was almost £2 million in July 2018, a 12.5 per cent increase on the previous year.⁴ Thus, the existing 12 per

² NAEA Propertymark, Housing Market Report: March 2019

³ <https://www.bbc.co.uk/news/business-40608995>

⁴ <https://ftalphaville.ft.com/2018/08/28/1535464701000/Expensive-London-property-is-getting-more-expensive--but-people-ain-t-buying/>

cent band plus the three per cent charge accrued on second properties is more of a threat to deter foreign investors than the one per cent surcharge for non-UK residents.

8. However, we do note that the surcharge may influence buying decisions where the purchaser is not seeking to buy high-value property, or purchase in bulk (therefore eligible for Multiple Dwellings Relief or the six or more dwellings exemption⁵). There is particular concern where a couple may purchase but one person is a non-UK resident for the purpose of this measure, such as a private sector employee is on a secondment overseas. Taking both of these instances into consideration, a couple where one individual is abroad on a secondment, and the other remains in the UK, should they wish to purchase a property (including where they are moving from one owned property to another) they would be liable to the surcharge up until the point where the spouse returns from the secondment. We think that this will deter moves in these situations, contributing to a lack of housing churn and ultimately less revenue for the Exchequer. Conclusively, we do not think that private sector employees working abroad on a fixed-term secondment should fall under the scope of the proposed surcharge.
9. NAEA Propertymark members also highlighted that whilst the surcharge may potentially impact demand from non-UK residents in London and other major cities, it would unlikely have any effect elsewhere in England and Northern Ireland. Research conducted by Savills estimated that within the high end 'Prime London' market, 32 per cent of buyers were made by overseas buyers.⁶ This contrasts with the same research that stated around seven per cent of purchases in the Greater London were made by non-UK residents.⁷ Evidence is lacking outside of London to determine approximate levels of ownership, although it has been indicated that Birmingham, Manchester, Liverpool have been identified as further "hotspots".⁸ We would expect greater knowledge of ownership demographics with the introduction of a Register of Overseas Entities; however, this will only reflect company ownership.⁹

Question 4: Do you agree that a rate of 1% for the surcharge strikes the right balance between the government's objectives on home ownership and the UK remaining an open and dynamic economy?

10. No, NAEA Propertymark does not agree that a rate of one per cent for the surcharge strikes the right balance between the government's objectives on home ownership and the UK remaining an open and dynamic economy. Whilst we do not have reason to believe that it will drastically hinder the dynamism of the economy in that it will not deter investors significantly, we do not believe that this measure will improve levels of homeownership. This is for three reasons. Firstly, evidence suggests that most property purchased by overseas buyers is in major cities and will therefore have little impact outside of these areas. Secondly, non-UK residents may offer vendors less to recoup the cost of additional SDLT. Thirdly, the consultation makes no reference to how revenue attained through the surcharge will benefit UK resident homeownership other than controlling house price inflation, which isn't a

⁵ <https://www.gov.uk/guidance/stamp-duty-land-tax-relief-for-land-or-property-transactions#sdlt-relief-for-multiple-dwellings>

⁶ <https://pdf.euro.savills.co.uk/residential---other/spot-worldlondon-lr.pdf>

⁷ [Ibid](#)

⁸ <https://www.theguardian.com/cities/2016/sep/29/london-mayor-sadiq-khan-inquiry-foreign-property-ownership>

⁹ <https://www.naea.co.uk/media/1047832/draft-overseas-entities-bill-march-2019.pdf>

guaranteed consequence. For the above reasons, we do not agree that the proposed one per cent surcharge will achieve in its aims.

11. In our March 2019 survey, 90 NAEA Propertymark members stated that they either did not think the surcharge would have a positive impact on UK resident buyers or were unsure (No: 44, Unsure: 46). The remainder of respondents thought that the surcharge would positively impact UK resident buyers (Yes: 14).¹⁰ Conclusively, the estate agents surveyed did not think that an additional one per cent surcharge would deter foreign investors, and were uncertain as to how the increased revenue would benefit UK resident buyers. Many also noted that impact would not be significant outside of major metropolitan areas.
12. As discussed in our response to Q3, we expect the proposed surcharge to have little impact outside of major cities. This echoes responses from NAEA Propertymark members, with many in less urban areas stating that they rarely or never make sales to non-UK residents. A consequence of this is that outside of these areas, the surcharge will have a nominal impact on improving home ownership for UK residents. As overseas buyers are largely investing in London, and now other large cities such as Birmingham and Manchester, these areas may see some change. However, as we see the surcharge having little to no impact on buying decisions of non-UK residents, we would not expect the surcharge to be significant in enhancing UK resident homeownership.
13. Many NAEA Propertymark members reported that should the surcharge be introduced; they would expect offers made to vendors to reflect the additional SDLT that the buyer will be liable for. We would argue that should vendors take the offer at one per cent below the price the non-UK resident purchaser is willing to pay, this puts the vendor at a disadvantage whilst benefitting the purchaser. Of course, the SDLT will still be directed to the Treasury, but this is not of a direct benefit to the vendor or home ownership for UK residents. We would like to see further analysis from the government into how it proposes the surcharge will aid its objective on home ownership, and how it will impact UK resident sellers as a consequence.
14. We do not believe that the proposed surcharge will have any significant benefit to the levels of UK resident homeownership. The government is optimistic that the surcharge will help control house price inflation, but as it is not a significant deterrent, we do not believe it will achieve in its aims. Further, as referenced in our response to Q3, although the landlord tax changes contributed to a decline in overseas landlords, it did little to prevent house prices rising by more than inflation between 2013 and 2016.¹¹ It must also be taken into consideration that house price inflation differs from region to region. For example, in the first quarter of 2019 house prices decreased in the south-east and north-east of England, Yorkshire Humber saw no growth, whereas houses prices increased in the Midlands and the north-west. For this reason, it may only make a change in certain areas. Conclusively, we do not see a strong enough argument for the proposed one per cent surcharge having any major impact on house price inflation in England and Northern Ireland as a whole.

¹⁰ NAEA Propertymark, Housing Market Report: March 2019

¹¹ <https://www.bbc.co.uk/news/business-40608995>

2. The surcharge on non-natural persons purchasing residential property in England and Northern Ireland

Question 5: Do you have any views on the proposed company residence test for the surcharge?

Question 6: Would you prefer to see a different residence test applied? If so, what test and why?

15. NAEA Propertymark is not aware of a more preferable method of determining company residence. It makes sense that for a company to be defined as resident in the UK that it must be incorporated in the UK, or at the time of acquiring property, central management and control is exercised in the UK. Furthermore, it is sensible to align the test with that existing in Part 2 of the Corporation Tax Act 2009¹² as tax advisors will already be familiar with this test. Therefore, we believe the test as detailed in the consultation document¹³ is sufficient.

Question 7: Do you have any views on non-UK resident individuals using UK resident companies to purchase residential properties?

16. NAEA Propertymark believes that provided the UK resident company abides by UK law and the non-UK resident individual can be fully identified, there should be no issue with property being purchased in this method. NAEA Propertymark has been involved the legislative procedure of the Draft Registration of Overseas Entities Bill. We have met with officials from the Department for Business, Energy and Industrial Strategy (BEIS) on this matter and have submitted evidence to the Joint Committee on the Draft Registration of Overseas Entities Bill where we discussed our policy position further.¹⁴ We do not believe that the legislation as it is drafted is fit for purpose. NAEA Propertymark is calling for: The Register to not be self-certified, as this will create poor and inconsistent data; Adequate resources for Companies House in order to effectively administer and monitor the Register; and to ensure that the register works harmoniously alongside Customer Due Diligence checks as required by the UK Money Laundering Regulations. Should these changes be implemented, we believe the Register will achieve in its aims.

Question 8: Do you have any views on the suitability of using the close company test as the basis for determining whether a company is under the control of non-UK resident persons?

17. NAEA Propertymark is responding on behalf of the property sales industry and is therefore, not responding to this question as it is not within our remit.

Question 9: Do you have any views on applying the attribution of rights rules at section 451 CTA 2010 between persons of differing residence status?

Question 10: Do you have any views on potential problems which might arise when using the definition of control at section 450 CTA 2010?

Question 11: Do you have any views on whether any of the exemptions at S442 to S447 CTA 2010 should remain in place or be removed for the purposes of the surcharge?

¹² https://www.legislation.gov.uk/ukpga/2009/4/pdfs/ukpga_20090004_en.pdf

¹³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777877/NRSDLT_Consultation_web.pdf

¹⁴ <https://www.naea.co.uk/media/1047832/draft-overseas-entities-bill-march-2019.pdf>

Question 12: Would you prefer to see a different test applied? If so, what test and why?

18. NAEA Propertymark is responding on behalf of the property sales industry and is therefore, not responding to these questions as they are not within our remit.

Question 13: Do you have any comments on the proposed treatment of partnerships as joint purchasers?

Question 14: Do you think there should be different test applied for purchases by partnerships? If so, what test and why?

19. NAEA Propertymark believes that purchases by partnerships should be tested on a majority basis rather than one partner not being a non-UK resident and therefore being susceptible to paying the surcharge. The proposals set out in the consultation document¹⁵ only require one partner to fail the residency test to determine the outcome for all partners in being subject to the 1 per cent surcharge. We believe that the proposals largely ignore that partnerships are not necessarily the joining of two entities, and therefore the test applied should instead focus on whether the majority of partners are UK residents or not.
20. We recommend that the surcharge should apply where a majority of partners are non-UK residents. This should take into account the capital interest that is held by the partners in the property and apply where 50 per cent or more of partners are non-UK residents. This will ensure that many UK residents are not disadvantaged by a surcharge that is not intended to impact them negatively.

Question 15: Do you have any views on the proposed SDLT treatment where the acquisition is made by a trust?

Question 16: Do you agree that the Statutory Residence Test for individual trustees will work for SDLT if references to tax year are replaced by references to the 12- month period ending with the date of the transaction? If not, why not? What alternatives would you propose?

21. NAEA Propertymark agrees that existing test of residents for trusts for Income Tax and Capital Gains Tax purposes should be used to determine residency for the purpose of the surcharge. Further, we agree that should the proposed surcharge be implemented, references to the tax year in the Statutory Residence Test for individual trustees should be replaced by references to the 12-month period ending with the date of transaction. This reflects the tax year being irrelevant to the concept of the surcharge and provides a consistent approach to the residency tests discussed throughout the consultation document.¹⁶

Question 17: How will the proposed surcharge on residential properties affect purchase decisions of non-UK resident non-natural persons (companies, trusts and partnerships) in England and Northern Ireland?

¹⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777877/NRSDLT_Consultation_web.pdf

¹⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777877/NRSDLT_Consultation_web.pdf

22. NAEA Propertymark does not see the proposed surcharge affecting purchase decisions of non-UK resident non-natural persons. In addition to the points raised in our response to Q3, including the SDLT rate for additional properties, existing rules already act as a disincentive to purchase decisions. An example of this in this instance, is the Annual Tax on Enveloped Dwellings for purchases by companies.¹⁷ This means that these companies are subject to the 15 per cent rate of SDLT and also a subsequent annual tax charge. We believe other existing tax measures act as more of a deterrent to purchase than the proposed measure will.

3. Reliefs and refunds from the surcharge

Question 18: Do you have any comments about the proposed reliefs from the surcharge?

Question 19: Are there any other categories of individual which you think the Government should consider providing a relief for and, if so, why?

23. Whilst we welcome exemptions for Crown employees subject to UK Income Tax, NAEA Propertymark believes that the reliefs outlined in the consultation document do not go far enough. NAEA Propertymark believes that the exemption for Crown employees on overseas postings should be replicated for individuals employed by private companies that are on a secondment outside of the UK. This should be considered where the individual is on a fixed-term contract and these individuals pay UK Income Tax on their earnings.¹⁸ We see no reason as to why a private employee working on a secondment overseas paying Income Tax in the UK, should not also be exempt from the proposed SDLT surcharge.

Question 20: Do you have any views on the proposed refunds available for those who have paid the surcharge?

Question 21: Do you have any views on the criteria the government is suggesting determining whether a purchaser would be eligible for a refund?

24. NAEA Propertymark supports the statement in the consultation document that “the government does not want the surcharge to act as a barrier to anybody coming to live and work in the UK.”¹⁹ Hence, with our suggestion to extend exemptions to private employees working overseas (see our response to Q19), we are content with the proposal for an individual to be eligible for a refund following them spending 183 days or more in the UK in the 12 months after the day of transaction.

4. Existing SDLT reliefs and the surcharge

Question 22: Do you have any views about how the reliefs will apply in relation to the surcharge?

25. NAEA Propertymark does not have any views about how the reliefs will apply in relation to the surcharge. We do, however, expect an increased use of the Multiple Dwellings Relief which allows purchasers to choose to pay SDLT on the average value of the properties

¹⁷ <https://www.gov.uk/guidance/annual-tax-on-enveloped-dwellings-the-basics>

¹⁸ <https://www.gov.uk/tax-foreign-income>

¹⁹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777877/NRSDLT_Consultation_web.pdf

purchased; or the 'six or more dwellings' provision which allows purchasers to pay SDLT on the basis of buying non-residential property. We discuss this further in our response to Q23.

5. Other SDLT rules and the surcharge

Question 23: Do you have any views on the proposed treatment where there is an interaction between existing SDLT rules and the surcharge?

26. NAEA Propertymark believes that instead of overseas buyers purchasing a single high value property, they may instead make use of the 'Purchases of six or more dwellings' SDLT exemption. These bulk property purchases do not incur residential SDLT charges due to it being counted as a non-residential transaction, and purchasers will also have the choice to claim Multiple Dwellings Relief. This also means that additional residential property rates do not apply. Multiple Dwellings Relief must amount to SDLT paid of at least one per cent of the overall purchase cost. Consequently, under the non-residential rates the highest amount of non-residential SDLT that will be paid is five per cent.²⁰ This allows the purchaser to choose whichever option costs the least money. We would expect this practice to increase with the introduction of a further SDLT burden.
27. We would argue that this is an unintended consequence of the SDLT surcharge, as bulk property purchases may be more likely to include the properties typically bought by first-time buyers. We are already seeing overseas investors purchasing entire blocks of apartments, and the one per cent surcharge may exacerbate this. In 2017, The Times reported that more than 93 per cent of flats in a housing development in Manchester were bought by foreign residents or companies registered overseas, with only 17 of 282 flats purchased by UK residents.²¹ Should this practice continue, less property that can typically be acquired by first-time buyers will be taken off the market. This goes against the government's reasoning that by introducing an SDLT surcharge for overseas buyers, it will champion an increase of homeownership in England and Northern Ireland.

6. Administration and compliance of the surcharge

Question 24: Do you have any views on the proposed approach for administration and compliance for the surcharge above?

28. No, NAEA Propertymark does not have any views on the proposed approach for administration and compliance for the surcharge.

Question 25: Are there any other changes to the administrative and compliance provisions in SDLT that the government should consider changing for the purposes of the surcharge?

29. NAEA Propertymark is not aware of any other changes to the administrative and compliance provisions in SDLT that the government should consider changing for the purposes of the surcharge.

²⁰ <https://www.whitefieldtax.co.uk/stamp-duty-multiple-dwellings-relief/>

²¹ <https://www.thetimes.co.uk/article/foreigners-dominate-market-for-new-homes-8srkj3l5v>