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New rates of Stamp Duty Land Tax for non-UK residents from 1 April 2021

Rishi Sunak announced in the Spring Budget 2020 the implementation of a new 2% SDLT surcharge for non-UK residents purchasing UK residential property in England & Northern Ireland.

This 2% surcharge is applied on top of residential rates and the 3% surcharge which are already applicable to UK-resident purchasers.

To determine whether a buyer is a non-UK resident for SDLT purposes a number of tests have been devised which are dependent on the type of purchaser.

For individuals, the SDLT residency rules are applicable from the date of completion. Buyers will be classed as UK-resident if they are present in the UK for at least 183 days during the 12 months before completion. A day qualifies if an individual is present in the UK at the end of that day.

Buyers need be aware that they cannot rely on their nationality and residence status under the UK Statutory Residence Test when considering whether they are UK resident for SDLT purposes.

The current climate is also likely to catch buyers unaware as a result of the fall in international travel due to the ongoing global COVID pandemic. Most will inevitably fail the lookback test which will result in the 2% surcharge being applied to a purchase.

HMRC have proposed an avenue to reclaim the surcharge, if after the purchase, the individual is present in the UK for at least 183 days in the two-year period beginning a year before the purchase and ending a year after the purchase. With the proposed travel restrictions, it is possible that purchasers could also fail the look forward test.

Partners in a business partnership buying a residential property together will be treated as joint buyers. If one partner fails the tests above then the whole purchase will be subject to the surcharge.

Corporate buyers will be classed non-UK resident if they are not UK resident for Corporation Tax purposes at the date of buying the residential property. However, special rules will apply for UK resident companies which are under the direct or indirect control of non-UK resident persons.

The new rates do not apply to land, mixed-use properties (those containing residential and commercial elements (unless a Multiple Dwellings Relief claim is made), commercial or industrial buildings.

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