

EXPLANATORY MEMORANDUM TO
THE STAMP DUTY LAND TAX (ADMINISTRATION) (AMENDMENT)
REGULATIONS 2021

2021 No. 13

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 Stamp Duty Land Tax (SDLT) is a tax on land transactions involving any estate, interest, right or power in or over land in England or Northern Ireland.
- 2.2 These transactions are notifiable to HMRC and notification can be made electronically, using either the HMRC online system or a system provided by an approved software provider. The transactions can also be notified using a paper form SDLT1, and if necessary, the supplementary forms SDLT2, SDLT3 and SDLT4.
- 2.3 This instrument amends Schedule 2, Land Transaction Return, of the Stamp Duty Land Tax (Administration) Regulations 2003 (S.I. 2003/2837). It will introduce new questions on the SDLT1 paper form in accordance with the introduction of new rates of tax for transactions undertaken by non-United Kingdom resident purchasers which are to be introduced for transactions with an effective date of 1 April 2021 or later.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 SDLT was introduced by the Finance Act 2003, replacing Stamp Duty for most land transactions from 1 December 2003. Land transaction taxes were devolved to Scotland as a result of amendments made by the Scotland Act 2012; and were devolved to Wales as a result of amendments made by the Wales Act 2014. Consequently, SDLT now only applies in England and Northern Ireland.
- 6.2 The instrument applies to the whole of the United Kingdom (UK) despite SDLT only applying to England and Northern Ireland. This is because there may be some transactions entered in to prior to devolution which when they complete in the future, may remain subject to SDLT.
- 6.3 The instrument amends the existing SDLT return (SDLT1) and introduces new questions on the return. The SDLT1 form is a “land transaction return” within the meaning of Schedule 10 to the Finance Act 2003. The new questions cover a purchaser’s residency status, whether the purchaser is a company under the control of non-UK resident persons, and whether crown employment relief will be claimed.
- 6.4 The crown employment relief will be for crown employees who would otherwise be defined as non-UK resident under the proposed residence test for individuals because of their deployment overseas. A crown employee is someone who holds an office or employment under the Crown such as a member of the UK armed forces, a civil servant or a diplomat and is subject to UK income tax. The relief will also apply to spouses and civil partners of crown employees who accompany that employee overseas.
- 6.5 The new questions are being introduced for the purposes of administering the tax and for compliance purposes as a result of introducing the non-UK resident SDLT surcharge for transactions with an effective date of 1 April 2021 or later; “effective date” has the meaning given by section 119 of the Finance Act 2003.

7. Policy background

What is being done and why?

- 7.1 At Budget 2018 the government announced that it would consult on the introduction of an SDLT surcharge on non-UK residents purchasing residential property in England and Northern Ireland.
- 7.2 A consultation ran from 11 February 2019 to 6 May 2019. The consultation included proposed consequential changes to the SDLT return for the purposes of administering the surcharge.
- 7.3 At Budget 2020, the government confirmed that the non-UK resident SDLT surcharge would be implemented from 1 April 2021. The SDLT rates for non-UK residents will be 2% higher than those that apply to purchases made by UK residents, and will apply to purchases of both freehold and leasehold property.
- 7.4 The current land transaction return, SDLT1, in Schedule 2 of the Stamp Duty Land Tax (Administration) Regulations 2003 is not adequate for the purposes of administering the new surcharge and for monitoring purposes.
- 7.5 Amending the regulations and introducing new questions on the SDLT1 form will allow purchasers or conveyancers to confirm if the non-UK resident surcharge

applies. This will provide better administration of, and compliance with, the surcharge.

- 7.6 In addition, the Document Exchange (DX) address field will also be removed from the SDLT1 return form. This is to reduce auto-generated post sent to agents via DX.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are no plans to consolidate amendments to the Stamp Duty Land Tax (Administration) Regulations 2003.

10. Consultation outcome

- 10.1 HMRC ran a technical consultation on this instrument between 26 October 2020 and 23 November 2020. There were three responses, which includes responses from professional bodies. The comments related to the wider policy change, which was the subject of the formal consultation held in 2019. HMRC plans to address most of the comments that were made in relation to the technical aspects of the instrument, such as the new questions in the SDLT form, in guidance. The consultation outcome for the wider policy change can be found in the following GOV.UK webpage, <https://www.gov.uk/government/consultations/stamp-duty-land-tax-non-uk-resident-surcharge-consultation>.

11. Guidance

- 11.1 All relevant HMRC guidance will be updated as appropriate to coincide with changes as a result of introducing the non-resident SDLT surcharge. The guidance will be updated before 1 April 2021.

12. Impact

- 12.1 The impact on businesses, charities and voluntary bodies is that businesses may be required to consider their residence status when purchasing a residential property in England or Northern Ireland. There is no significant impact on charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 A Tax Information and Impact Note (TIIN) covering this instrument was published on 26 October 2020 alongside draft legislation for the changes to the SDLT return and is available on the website at <https://www.gov.uk/government/consultations/draft-legislation-the-stamp-duty-land-tax-administration-amendment-regulations-2021>. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise the impact of the requirements on small businesses (employing up to 50 people).

13.3 The basis for the final decision on what action to take to assist small businesses is that the impacts on small businesses would be negligible.

14. Monitoring & review

14.1 HMRC will monitor the impact of the changes introduced by this instrument on a continual basis using information collected from its internal systems and processes, as well as regular engagement with affected stakeholder groups.

14.2 As this instrument concerns a tax related measure, it does not include a statutory review clause under the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Syed Sufan at HM Revenue and Customs Telephone: 03000 559106 or email: syed.sufan@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Morris Graham, Deputy Director for Stamps Taxes Policy, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Jesse Norman MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.