

Association of Accounting Technicians (AAT) response to HMRC & HM Treasury consultation on Stamp Duty Land Tax: non-UK resident surcharge

1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to this consultation paper, published on 11 February 2019.
- 1.2. Demand for residential property is no longer simply coming from the 65m currently resident in the UK but from across Europe, Asia and America.
- 1.3. It is not just the very wealthy who are purchasing properties across the UK. Middle income earners from across the world, especially China, Malaysia and Singapore, are finding UK property an increasingly attractive proposition. This has been exacerbated the weakness of sterling following the referendum result on Brexit.
- 1.4. The Centre for Housing Policy at York University suggests that 18% of London new build residential properties were sold to overseas buyers in 2016, with more likely to have bought existing housing stock.
- 1.5. Some of these properties are bought solely as investments rather than as homes or even as rental properties. York University suggests over 10% of new build homes are under-occupied, rising to almost 50% in central London. In other words, they sit empty, appreciating in value whilst large numbers of British residents become priced out of the property market, are forced to rent or to live with friends and family.
- 1.6. Despite some vociferous protests from a minority within the estate agency and house building community, imposing an additional tax charge on non-resident property purchasers is far from radical and does not mean that the British economy is unwelcoming or closed for business as some opponents have suggested.
- 1.7. For example, Singapore, often used as an example of the type of open, dynamic and successful economy the UK should aspire to be, especially in a post-Brexit era, prevents any overseas residents from purchasing residential property.
- 1.8. Likewise, Iceland, Poland, Denmark, Hungary and Australia all impose restrictions on overseas residential property purchasers and yet continue to operate successful, modern economies that trade extremely well internationally and attract considerable inward investment.
- 1.9. It is also worth highlighting that there will be no implications for commercial property in London, approximately 80% of which was purchased by overseas investors in 2018¹, or any other part of the UK where approximately half was purchased by overseas investors. This substantial investment will continue uninterrupted and again demonstrates that in relation to trade, investment and the economy in general, Britain is very much an open economy.
- 1.10. AAT appreciates the difficult balancing act needed to achieve competing policy objectives of controlled house price inflation and an open economy but does not believe these proposals have successfully struck that balance.
 - 1.1. There is considerable support for change, as demonstrated by the July 2017 *AAT Housing Survey*, which revealed 54% of AAT members believe residential property buyers should be required to be resident in the UK. When members were asked if residential property purchasers from abroad should have to “*meet certain eligibility criteria*” to invest in the UK property market, 90% agreed, 7% disagreed and just 3% were unsure.
 - 1.2. On the specific question of an additional tax charge being applied, AAT members were asked, “*Should an additional tax be paid on property purchases by overseas property investors?*” and 78% said “*Yes*” compared to just 14% who said “*no*”.

¹ Jones Lang LaSalle, 2019:
<https://www.jll.co.uk/en/views/overseas-investment-continues-to-dominate>

2. Executive summary

- 2.1. **The consultation document repeatedly states there is evidence that purchases of property by non-UK residents is pushing up house prices for UK residents.**
AAT agrees that, if set at the right level, an additional charge on such purchases will help control house price inflation.
- 2.2. **AAT supports this policy in principle, having campaigned for its introduction for over 18 months following overwhelming support from its members.**
Although AAT agrees with much of what is being proposed, there appears to be some shortcomings, which must be addressed to ensure success.
- 2.3. **The non-UK resident surcharge has been reduced from the 3% suggested by the Prime Minister in 2018 to just 1% today.**
This is likely to reduce the effectiveness of the charge in delivering its policy objectives of sufficiently reducing overseas residential property purchases to control house price inflation.
- 2.4. **AAT does not believe the minimal residency test being proposed is sufficient.**
As proposed, overseas residential property investors only need to be resident in the UK for six months to avoid the charge. In contrast, UK residency is not granted by the Home Office until an individual has resided in the UK for at least five years.

3. AAT response to the consultation paper

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

- 3.1. AAT supports this policy proposal and believes many, other than some in the estate agent community, will be disappointed that the Government has already diluted the proposal from the 3% charge announced by the Prime Minister at Conservative Party Conference last year.

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

- 3.2. If changing the existing reference from a tax year to a 12-month period is being made because the tax year is deemed “irrelevant” then AAT does not understand the rationale for continuing to use a one-year period (in reality 6 months).
- 3.3. One of the key reasons for introducing this policy is to introduce an element of fairness to the system, ensuring those who live, work, pay tax and contribute towards British society are not being undermined by overseas property buyers who make it harder for them to get on the property ladder². Requiring a purchaser to have lived in the UK for a mere 6 months (in the 12-month period preceding the transaction) would probably not be considered a level playing field by most neutral observers.
- 3.4. In contrast to the proposed 6-month test, obtaining UK resident status from the Home Office requires UK residency for a minimum of five years except in limited circumstances (retirement, incapacity etc.) which results in a shorter test of two or three years being applied.
- 3.5. A residency test measured in years (three or five) would appear to be more reasonable than a test measured in days (183) if the stated objective of demonstrating a strong commitment to the UK is to be achieved. AAT therefore urges Government to think again on this issue.

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

- 3.6. At 1%, the charge is likely to only dissuade a small number of overseas investors. To others it may be barely noticeable. In contrast, the original 3% suggested by the Prime Minister was more likely to alter behaviour, which in turn would likely lead to a reduction in house price inflation and ensure more UK residents are able to acquire a home.

² Conservative Party web site, 30 September 2018:
<https://www.conservatives.com/sharethefacts/2018/09/raising-stamp-duty-for-non-uk-residents>

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?

- 3.7. No. AAT believes that the Prime Minister was correct when suggesting an additional Stamp Duty Land Tax charge of 3% was needed to address this problem. As set out above at 3.6, the reduction to 1% is unlikely to meet Government objectives on home ownership, although it will continue to ensure we have an open economy that encourages international investors to acquire homes ahead of UK residents.

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

- 3.8. AAT strongly supports the introduction of a company residence test to determine liability to the surcharge to ensure the charge is applicable to all relevant parties rather than using company structures to avoid legal responsibilities.
- 3.9. Utilising chapter 3 of Part 2 of the Corporation Tax Act 2009 appears sensible. It is essential that companies are not only incorporated in the UK but that at the time they acquire residential property, their central management and control is exercised in the UK.

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

- 3.10. The Government proposals for companies appear reasonable.

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

- 3.11. This should not be permitted as it will simply encourage some non-UK residents to utilise an effective loophole, avoid their legal responsibilities, undermine the policy and damage confidence in both the Government and tax authorities.

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?

- 3.12. This test appears to be the best means of tackling this problem given some of the problems already identified in the consultation with alternatives such as persons of significant control and so on. It is imperative that the residency status of the participators is determined as if they were direct purchasers of the property acquired by the close company using the residence tests proposed for the surcharge and these proposals appear to deliver that.

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

- 3.13. AAT agrees that where the purchaser is a partner, former partner, or person connected with either a partner or former partner, the residency status of the purchaser alone should determine whether the surcharge will apply or not.

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

- 3.14. AAT is satisfied that this is the most suitable way of dealing with purchases by partnerships.

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

- 3.15. AAT understands why the government does not intend changing this treatment under the new rules and that this means that the surcharge will apply if the beneficiary (or one of the beneficiaries) of the bare trust is non-UK resident, which appears to be a perfectly reasonable outcome.

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?

- 3.16. AAT does not believe the minimal residency test being proposed is acceptable (see above at 3.2-3.6).

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?

- 3.17. It is unlikely to make a significant difference given it is a third of the originally proposed 3% additional charge.

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

- 3.18. In general, AAT believes that granting reliefs and exemptions serves to undermine effective, robust policy. However, given the very limited and perfectly understandable nature of the proposed relief, AAT would support an exemption for non-UK residents who at the time of the transaction are Crown employees subject to UK Income Tax e.g. armed forces and civil servants.

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

- 3.19. There may be an argument from some quarters that UK Citizens who have decided to work overseas but want to buy a UK property should be exempt. Such exemptions should not be allowed given they have made the decision to leave the country of their own free will, this would undermine the policy and the usual rules should be applied to ensure consistency, fairness and equity.

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

- 3.20. Providing a refund to those who, having failed to meet the necessary tests, then subsequently spend 183 days in the UK following the purchase appears to be an unnecessary and rather generous proposal for which the rationale remains unclear.

- 3.21. That said, if the residency test is increased, for example to three or five years, then AAT would be relaxed about this applying retrospectively after the transaction given it would demonstrate a genuine commitment to the UK.

- 3.22. AAT believes that any consideration of providing upfront relief for those who simply state they "intend" to spend 183 days of the 12 months following their transaction in the UK (or whatever the residency test may ultimately prove to be), would seriously undermine the effectiveness of the policy and would open it up to significant enforcement challenges and costs as well as the likelihood of abuse. AAT therefore suggests that all such considerations be removed.

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

- 3.23. Permitting a refund appears to undermine the basic premise of the policy as highlighted at 3.20 above. However, as stated at 3.21, if the residency test were to be significantly extended, then providing a refund would be much more acceptable as purchasers would have clearly demonstrated a long-term commitment to the UK.

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

- 3.24. AAT notes that it is a separate, although partly related, issue that is not covered by this consultation, but believes granting First Time Buyer Relief to overseas residents is iniquitous, unfair, unreasonable and undermines not only this policy but the Government's policy objective of helping more of those living in the UK to get on the property ladder. FTB relief was unlikely to have been designed to assist overseas residential property investors.
- 3.25. AAT is therefore pleased to note that the overseas Stamp Duty charge will apply to such purchasers, even though they will continue to benefit from FTB relief and commends HM Treasury for taking this approach.
- 3.26. In relation to alternative property finance, AAT agrees with the recommendation that the purchaser be subject to the surcharge, with the residency status of the person obtaining the finance, rather than the financial institution from where it was obtained, being used to assess whether the surcharge applies.

3.27. The proposals for Partial Charity Relief and Seed Relief appear sensible given both will ensure that non-UK resident purchasers are covered by the policy.

4. **About AAT**

- 4.1. AAT is a professional accountancy body with approximately 50,000 full and fellow members and over 90,000 student and affiliate members worldwide. Of the full and fellow members, there are more than 4,250 licensed accountants who provide accountancy and taxation services to over 400,000 British businesses.
- 4.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

5. **Further information**

- 5.1. If you have any queries, require any further information or would like to discuss any of the above points in more detail, please contact Phil Hall, AAT Head of Public Affairs & Public Policy:
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