Changes to the stamp duty land tax return for the non-resident surcharge

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HMRC consulted recently on changes to the SDLT1 form in advance of the introduction of the stamp duty land tax surcharge of 2% for non-residents.

The CIOT and the Stamp Taxes Practitioners Group considered the draft regulations that add new questions to the SDLT1 form, the form that must be completed to report land transactions in respect of which stamp duty land tax (SDLT) is payable. We are concerned that many of those completing a return will answer the new questions, such as ‘are any of the purchasers a UK resident close company controlled directly or indirectly by a non-UK resident?’, without reading the guidance in this complex area and are likely to answer the questions incorrectly.

Both the CIOT and the Stamp Taxes Practitioners Group, in their responses to the consultation on the substantive draft legislation for the non-resident surcharge, expressed strong concerns about the disproportionate complexity of the non-UK control test based on the close company legislation. Consequently, it will be essential that the SDLT return guidance adequately explains how that test is applied, as well as providing guidance on the simplified test of residence for individual purchasers.

It is also suggested that sections of the existing SDLT return guidance in respect of partnerships and trusts could be expanded for the introduction of the surcharge. There is a risk that system users who are not experienced in SDLT misunderstand who the purchaser is from a SDLT perspective. There can be confusion in how the return is completed when dealing with partnership or trust purchasers. This confusion may not have a material consequence now if the return is incorrect. However, where there are partnership or trust purchasers and the 2% surcharge is potentially applicable, it will be important that the purchaser information is accurately completed.

For trustees, we suggest the guidance needs expanding to make it clear when the trustee is, and is not, the purchaser from an SDLT perspective. (A non-UK resident individual who is the beneficiary of a bare trust with UK trustees would be the ‘purchaser’, whereas where a non-UK resident individual is the beneficiary of a settlement trust with UK trustees, the UK trustees will be the ‘purchaser’.)

In relation to partnerships, the ‘purchaser’ guidance could be helpfully expanded to include a reminder that where the purchaser is a partnership, it is the partners’ details which are needed, rather than say the details of a UK limited partnership (which could have non-resident partners).

The current SDLT return guidance is based on the paper SDLT return forms, not the online form. This makes the guidance difficult to follow as the online return does not match the paper return. Given that most SDLT returns are completed online, it would make completing the online form much easier if the guidance matched the online return.

The regulations are now in final form: SI 2021/13 The Stamp Duty Land Tax (Administration) (Amendment) Regulations 2021.