Sergeant and Sims on Stamp Taxes

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STAMP DUTY LAND TAX MEASURES—DIVISION AA

Non-UK resident stamp duty land tax surcharge – Budget 2020: overview of tax legislation and rates, para 2.44

A two per cent surcharge will apply to purchases of residential property in England and Northern Ireland by non-UK residents from 1 April 2021 unless pursuant to contracts exchanged before 11 March 2020. It will apply in addition to the existing three per cent surcharge for purchases of 'additional' dwellings such as second homes and buy-to-lets. Consequently, a non-UK resident individual purchasing an 'additional' dwelling and a non-UK resident company purchasing a dwelling will suffer a five per cent surcharge in total from April next year. The maximum effective rate of stamp duty land tax (SDLT) will become either a flat 17 per cent (for corporate purchasers liable to the existing 'super' 15 per cent rate) or close to 17 per cent (for all other corporate purchasers and individuals liable to the existing three per cent surcharge). A response to the consultation is expected to be published in the spring of 2020 and the Government will consult on the draft legislation in the summer of 2020 before the legislation is introduced in the Finance Bill 2020/21.

Relief for housing co-operatives – Budget 2020: overview of tax legislation and rates, para 2.45

A new relief from the flat 15 per cent 'super' rate will be introduced in the Finance Bill 2020/21 for 'qualifying housing co-operatives'. This is likely to refer to residential buildings purchased by companies that are lived in by an association of members. The 15 per cent 'super' rate is meant to deter individuals against 'enveloping': ie, from using companies to buy and hold dwellings meant for occupation by the individual or connected persons. Housing co-operatives are outside that target. Qualifying housing co-operatives will also benefit from a relief from the annual tax on enveloped dwellings (ATED), a tax that is aligned to the incidence of the 15 per cent super rate.

Tackling promoters of tax avoidance, HMRC promoter strategy and tax conditionality: wider application – Budget 2020: overview of tax legislation and rates, paras 2.46, 2.47 and 2.51

Three measures were announced to tackle marketed tax avoidance. First, legislation will be introduced in the Finance Bill 2020/21 to make changes to the Promoters of Tax Avoidance Schemes rules in Part 5 of the Finance Act 2014, presumably to tighten the rules and make them more effective. Second, HMRC will publish a new 'ambitious' strategy for taking further action to 'stop the spread of marketed tax avoidance and deter taxpayers from taking up the schemes'. Finally, the Government will publish a consultation on making changes to government procurement rules to encourage 'good tax compliance'.

ANNUAL TAX ON ENVELOPED DWELLINGS MEASURES—DIVISION AB

Annual tax on enveloped dwellings: annual chargeable amounts for the 2020 to 2021 chargeable period – Budget 2020: overview of tax legislation and rates, para 2.43

The annual tax on enveloped dwellings (ATED) chargeable amounts will increase by 1.7 per cent for the next chargeable period 1 April 2020–31 March

2021. Provision is made in the Finance Act 2013 for the amounts to increase each year in line with the September Consumer Prices Index (CPI). The September 2019 CPI figure was 1.7 per cent.

The new chargeable amounts are as follows:

Taxable value of dwelling	**Annual chargeable amount for 1 April 2020–31 March 2021**
More than £500,000 but not more than £1m	£3,700
More than £1m but not more than £2m	£7,500
More than £2m but not more than £5m	£25,200
More than £5m but not more than £10m	£58,850
More than £10m but not more than £20m	£118,050
More than £20m	£236,250

For more information on ATED, see Division AB.

Relief for housing co-operatives – Budget 2020: overview of tax legislation and rates, para 2.45

A new ATED relief will be introduced in the Finance Bill 2020 for 'qualifying housing co-operatives'. This is likely to refer to residential buildings purchased by companies that are lived in by an association of members. ATED is meant to deter individuals against 'enveloping': ie, from using companies to buy and hold dwellings meant for occupation by the individual or connected persons. Housing co-operatives are outside that target. Qualifying housing co-operatives will also benefit from a relief from the 15 per cent 'super' rate, a rate that is aligned to the incidence of ATED.

STAMP DUTY AND STAMP DUTY RESERVE TAX MEASURES—DIVISION A

Transfer of unlisted securities to connected companies for stamp duty and stamp duty reserve tax

The Finance Bill 2020 will contain legislation to insert a new section 47A (stamp duty: transfers of unlisted securities and connected persons) and section 48A (SDRT: unlisted securities and connected persons) into the Finance Act 2019. They would set a market value collar (the chargeable consideration cannot be less than the market value of the securities transferred) where a person is connected with a company and the person (or the person's nominee) transfers or agrees to transfer 'unlisted securities' to the company (or the company's nominee) for consideration, including the issue of shares after Royal Assent (or where the agreement is conditional, the condition is met after Royal Assent). The requirement that the consideration includes the issue of shares distinguishes the provision from the equivalent market value rules for transfers of listed securities introduced in 2019. This had been announced before and the proposed legislation is unchanged from the draft Finance Bill 2019/20.

In the accompanying policy paper, the measure is described as 'narrowly targeted to only apply where contrived arrangements are used to minimise tax in circumstances where stamp duty relief is not available [on company reorganisations]'. The contrived arrangements in question refer to techniques aimed at reducing the value of the consideration shares (thereby resulting in a reduction in stamp duty) on a share-for-share exchange where relief under section 77 (Acquisition of target company's share capital) of the Finance Act 1986 is not available. The measure, one infers, is intended to give teeth to section 77A (Disqualifying arrangements) of the 1986 Act by forcing persons to pay stamp duty on share-for-share transactions subject to meeting the conditions in section 77, including the absence of disqualifying arrangements within the meaning given by section 77A. The Finance Bill 2020 will also contain legislation to amend section 77A by giving a new exception with effect from Royal Assent. An arrangement for a person to obtain control of the acquiring company (alone or with others) would not be a disqualifying arrangement provided that that person has held 25 per cent or more of the issued share capital of the target company at all times during the three-year period ending on the share-for-share exchange. This is intended to ensure that 'most' capital reduction partition demergers incur a single stamp duty charge.

OVERVIEW OF TAX LEGISLATION AND RATES

2 Measures not in the Finance Bill 2020

Property tax

2.43. Annual tax on enveloped dwellings (ATED): annual chargeable amounts for the 2020 to 2021 chargeable period

The ATED charges increase automatically each year in line with inflation (based on the previous September's CPI). The ATED charges will rise by 1.7% from 1 April 2020 in line with the September 2019 CPI. A tax information and impact note has not been published for this measure, as it is a routine legislative change.

2.44. Non-UK resident stamp duty land tax surcharge

At Budget 2018, the government announced that it would consult on introducing a Stamp Duty Land Tax surcharge on non-UK residents purchasing residential property in England and Northern Ireland. That consultation took place between 11 February and 6 May 2019. At Budget 2020, the government confirmed that it will legislate in Finance Bill 2020–21 for a 2% surcharge to take effect from 1 April 2021. Where contracts are exchanged before 11 March 2020 but complete or substantially performed after 1 April 2021, transitional rules may apply subject to conditions. The government will shortly publish a summary of responses to the consultation.

2.45. Relief for housing co-operatives

As announced at Budget 2020, the government will introduce new reliefs from the ATED and the 15 per cent rate of SDLT for certain qualifying housing cooperatives. The government will consult on draft legislation in summer 2020 and legislate in Finance Bill 2020–21.

Avoidance, evasion and non-compliance

2.46. Tackling promoters of tax avoidance

As announced in the government's response to the Independent Loan Charge Review, the government is taking forward further measures to reduce the scope for promoters to market tax avoidance schemes. Draft legislation will be published in July 2020 and legislation will be introduced in Finance Bill 2020–21 to make changes to the existing regimes that tackle avoidance. The changes will come into effect following Royal Assent.

2.47. HMRC promoter strategy

HMRC will publish a new ambitious strategy for tackling the promoters of tax avoidance schemes. This will outline the range of policy, operational and communications interventions both underway and in development to drive those who promote tax avoidance schemes out of the market, disrupt the supply chain to stop the spread of marketed tax avoidance and deter taxpayers from taking up the schemes.

2.51. Tax conditionality: wider application

The government will publish a discussion document seeking views on the wider application of tax conditionality in the spring. Tax conditionality refers to a principle whereby businesses are granted access to government awards and authorisations (such as approvals, licences, grants) only if they are able to demonstrate good tax compliance.

BUDGET 2020: POLICY COSTINGS

Stamp duty land tax: 2% non-UK resident surcharge

Measure description

This measure introduces a 2% Stamp Duty Land Tax (SDLT) surcharge in England and Northern Ireland for all purchases of residential property by non-UK residents, in addition to other SDLT payable.

The measure will be implemented from 1 April 2021.

Refunds of the surcharge will be available for those who become resident after their purchase.

The tax base

The tax base is estimated using SDLT returns, income tax self-assessment returns and HM Land Registry data.

The tax base grows over the forecast period in line with the forecast for residential SDLT.

Costing

The static costing is estimated by applying the pre- and post-measure tax regimes to the tax base described above.

The costing accounts for a behavioural response such as forestalling before the measure is implemented, and a reduction in residential property purchases by non-UK residents.

Exchequer impact (£million)

Exchequer impact	2019–20	2020–21	2021–22	2022–23	2023–24	2024–25
	0	+ 250	– 355	+ 35	+ 105	+ 105

Areas of uncertainty

The main uncertainties in this costing relate to the size of the tax base and the behavioural response.

Stamp tax on shares: connected company transfers

Measure description

This measure extends the Stamp Taxes on Shares (STS) market value rule to the transfer of unlisted securities to connected companies where there is an issue of shares by way of consideration. Where the rule applies the transfer will be chargeable based on the amount or value of the consideration for the transfer or, if higher, the market value of the unlisted securities.

This measure will also amend related legislation so that company reorganisations will not be subject to a double STS charge as a result of the change, provided certain conditions are met.

The tax base

It is anticipated that around 300 cases will be affected by this change each year, with an estimated mean value of £2.5 million per company. These transactions are subject to the normal tax rate of 0.5% that applies to most types of share transactions.

Costing

The costing is estimated by applying the pre- and post-measure tax regimes to the tax base described above.

The costing accounts for a behavioural response whereby a number of businesses may decide to no longer proceed with the types of changes covered by this measure.

Exchequer impact (£million)

Exchequer impact	2019–20	2020–21	2021–22	2022–23	2023–24	2024–25
	0	+ 5	+ 5	+ 5	+ 5	+ 5

Areas of uncertainty

The main uncertainties in this costing relate to the size of the tax base.

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