

Stamp Duty Land Tax: non-UK resident surcharge consultation



To: non-residentSDLTsurchargeconsultation@hmtreasury.gov.uk

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Introduction

1. The British Property Federation (BPF) represents the real estate sector – an industry with a market value of £900bn which contributed more than £60bn to the economy in 2016. We promote the interests of those with a stake in the UK built environment, and our membership comprises a broad range of owners, managers and developers of real estate as well as those who support them. Their investments help drive the UK's economic success; provide essential infrastructure and create great places where people can live, work and relax.
2. The sector is one of the most successful in the world at attracting domestic and overseas long-term investment capital into the renewal of the UK's towns and cities. Such large, long-term, patient investors are critical to the urban redevelopment and regeneration of our country, and crucial for creating and maintaining modern and productive work places.
3. We acknowledge the government's objectives of supporting home ownership. However, we are not convinced that this policy will help achieve the desired outcome of helping more people into home ownership. Given the housing affordability crisis is fundamentally a result of an under supply of homes in the locations that people want to live - this policy does not address this challenge, and indeed, will penalise businesses which are contributing to the supply of housing in this country.
4. In particular, those investing in build-to-rent are contributing to the housing supply and given they are specifically a rental product, will never be in competition with owner occupiers or first-time buyers. Furthermore, research recently carried out for Homes for London suggest that overseas investment stimulates the supply of housing by effectively forward funding developments through off-plan sales, which reduces development risk and expedites the build out of a siteⁱ. Therefore, the government should carefully consider the risk of any unintended consequences of these measures which could inadvertently hinder housing supply – which would be in complete contradiction to the proposed policy objectives and more importantly, the government's housing delivery targets. (We provide more background on build-to-rent and forward funded development models in appendix 1 and 2 respectively).
5. It is also counterintuitive that the government is developing measures that risk disincentivising overseas investment when it has a whole Department whose main aim is to encourage inward investment.
6. On a more general note, we have reservations around the use of SDLT as a policy tool. Stamp duty increases barriers to transactions and reduces liquidity in the housing market, which is not a desirable outcome for the market as a whole. We are also concerned that these measures will significantly and disproportionately increase the administrative compliance and legislative complexity for both professionals in the industry and individuals who are caught by these measures.
7. In summary, the BPF would not support this proposal as a tool to support home ownership as there are significant risks that these measures could hinder the supply of housing in the UK. In addition, the

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proposals as they stand would generate significant and disproportionate complexity – which is particularly hard to justify given there is a lack of certainty that the measures would help achieve the intended policy outcome. Should the government choose to proceed, the proposals should be simplified significantly and the unintended consequences on housing supply should be addressed.

Key recommendations

- a. **Build-to-rent should not be impacted by these measures** – Build to rent is designed specifically as a rental product and is therefore not in competition with home owners or first-time buyers. Build-to-rent is contributing to the country’s housing supply, and as such, it would be contrary to the policy objectives if it was impacted by these measures.
- b. **The surcharge should be limited to individuals** – There are existing rules which already disincentivise the ownership of homes in companies – in particular, ATED (Annual Tax on Enveloped Dwellings), which includes a 15% rate of SDLT. Therefore, the risk that an individual would choose to envelope their property in order to avoid this 1% surcharge would be negligible. Given the extension of the SDLT surcharge to companies would add considerable complexity to the rules, as well as create an unlevel playing field in some cases; extending these rules to companies is unnecessary and unjustifiable. Furthermore, the ATED rules already include appropriate safeguards for businesses that transact in residential property as part of their business; which would help ensure that these rules do not unintentionally have a detrimental impact on housing supply.
- c. **Short leases should not be caught by these rules** – Most people who enter into a lease in the UK will either be here for a short period of time for work or study, in which case they’re not in competition with home owners and shouldn’t be within scope of these rules. Or, they will be intending to live in the UK for the foreseeable future and will therefore likely meet the residence requirements and not be within scope of the surcharge. As such, the administrative complexity involved in extending these rules to short leases is unnecessary.

8. We welcome the opportunity to respond to the Consultation, which is structured as follows:

Appendix 1: Build-to-rent – background and impact

Appendix 2: Forward funding – impact on development finance

Appendix 3: Response to consultation questions

9. If you would like to discuss any aspect of our response in more detail, please get in touch.

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Appendix 1: Build-to-Rent – background and impact

What is Build-to Rent?

10. Build-to-rent is an asset class focused solely on the rental sector, providing high quality, professional managed rental homes. The developments are at scale, typically creating at least 100 units per development, in order to achieve the economies of scale required to make the investment viable. Build-to-rent assets are particularly sought after by large scale institutional investors, like pension schemes, because the long-term income yields generated create a good match to their long-term pension liabilities.
11. **There are currently 139,508 build to rent units** either completed or planned across the UK, including 29,416 completed, 43,374 under construction, and a further 66,718 with planning permission. For comparison, there were fewer than 20,000 units either in planning or completed in 2013 which shows the significant interest and growth in the sector in recent years. Build-to-rent is a crucial part of the solution to helping the government meet its housing delivery targets to address the housing under supply in this country.

What's the impact of a 1% surcharge of SDLT on the Build-to-rent sector?

12. Approximately a third of UK real estate is owned by overseas investors, although it is not uncommon for UK investors to have some property ownership in overseas entities. Tax transparent vehicles, like JPUTs are popular vehicles to hold real estate as they allow tax exempt investors, like pension funds, to achieve the same tax outcome in a joint venture as they would have had they owned the asset directly – and joint ventures are incredibly common in real estate investment as a means to share risk, pool resources etc. As such, the impact of this measure is likely to be felt across the whole sector. Transaction taxes are incredibly detrimental for liquidity and investment because they require a payment of tax before any profit has even been made – therefore, every increase in the transaction taxes will detrimentally impact on yields and therefore investment viability. In the build -to-rent sector, a reduction in investment viability means fewer homes being built – an outcome which is in complete contrast with the policy aims of this measure.
13. It is worth noting that this is the latest in a deluge of changes to the real estate tax universe in recent years. Each change not only increases costs, but more importantly, makes it harder and harder for business to invest with any certainty, making real estate investment in the UK increasingly unattractive.

How does Build-to-rent make use of Multiple Dwellings Relief?

14. Multiple dwellings relief ensures that a residential property transaction is subject to an SDLT rate which is based on the average price of the units involved in the transaction. This element of the SDLT rules has been crucial in enabling build-to-rent transactions to be subject to a level of transaction tax which is more reflective of the value of the units they are creating.

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15. In recent years, investors have increasingly “forwarded funded” the development of a build-to-rent schemes. This essentially involves the investor purchasing the development at a very early stage with a contract in place with the developer to finalise the scheme. This approach significantly reduces the risk for the developer and indeed, it is often not possible to finance the development at all without the ultimate investor’s funding at this early stage. It also allows the ultimate investor to have significant involvement in the design and specifications of the asset. The consequence of this approach means that most forward funded developments are currently able to achieve the 3% SDLT rate using multiple dwelling relief.
16. The consequence of effectively increasing the minimum SDLT rate under MDR to 4% for build-to-rent is that the expected yield decreases and therefore the viability of development decreases. It is important to note that the impact of this will be mostly felt on developments which are not completed yet – for the current pipeline, the forward funded schemes are mostly outside of London, with a strong bias towards Birmingham, Manchester, Liverpool and Bristol. However, it will also impact on some schemes where the unit prices even when fully built can benefit from the MDR rates – again, these schemes will generally be outside of London.
17. These changes will essentially exacerbate the recent introduction of the 3% surcharge on additional homes – another measure for which build-to-rent was not the target. To reiterate, the consequence of reducing the viability of build-to-rent developments is that fewer homes are supplied or that the costs of renting increase – this is in complete contrast with the objectives of this measure and the wider objectives of government to address the housing crisis. The final rules should ensure that build-to-rent investments are not impacted by this surcharge – and by the same token, we would continue to recommend that build-to-rent is also not subject to the additional dwellings surcharge.

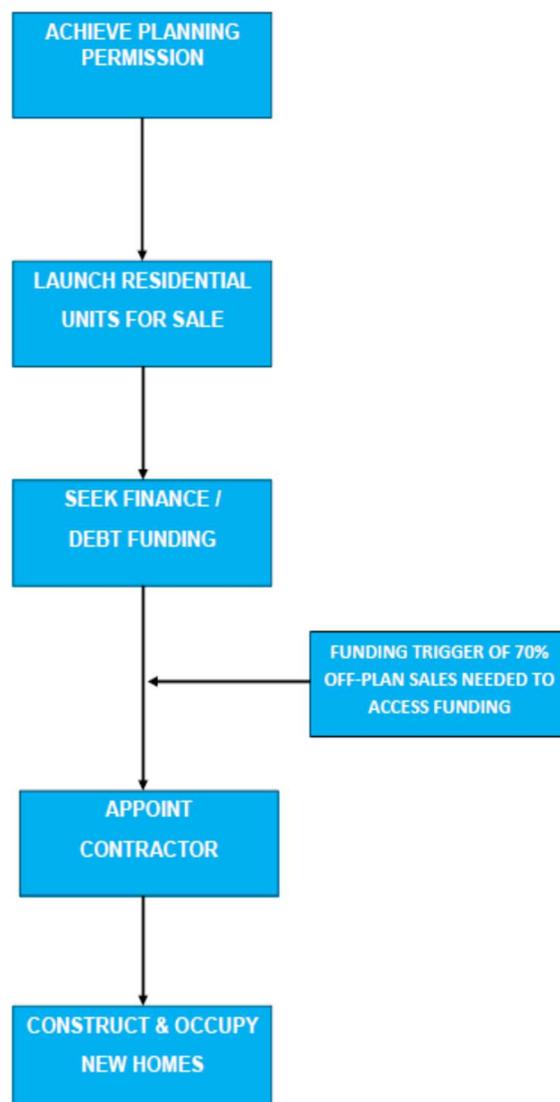
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Appendix 2: Forward funding development finance

18. It is common for some housing developers to sell their units off-plan – quite often a few years before the development is due to be complete. These off-plan sales effectively ‘de-risk’ the development – enabling the developer to access bank funding to complete the development. Banks typically only release funding once developers have pre-sold 70% of units in a development.

19. An example of a forward funded development timeline is illustrated below:



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20. The development timeline illustrated shows that debt funding for a development is often not even triggered until the developer achieves a certain number of pre-sales - typically, 70% pre-sales are needed before bank finance for the development will be provided, which then enables construction of new homes to commence.
21. Off-plan sales, whether from overseas or UK investors, can enable a development to get off the ground – generating housing supply, including affordable housing, which may not have otherwise been possible. It is important that government does not accidentally switch off the demand from ultimate investors which are able to provide forward funding to facilitate the development of housing.

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Appendix 3: BPF response to consultation questions

22. Chapter 2: Individuals

23. **Question 1: Do you have any views on the proposed SDLT residence test for non- UK resident individuals?**
24. **Question 2: Would you prefer to see a different residence test applied? If so, what test and why?**
25. **Question 3: How will the proposed surcharge on residential properties affect purchase decisions of non-UK resident individuals in England and Northern Ireland?**
26. **Question 4: Do you agree that a rate of 1% for the surcharge is set at the right level to balance between the government’s objectives on home ownership and the UK remaining an open and dynamic economy?**
27. It would be sensible to allow the normal statutory residence test as an additional alternative to this simplified test. That way, if an individual is already required to know whether they are ordinarily resident, they will not need to consider multiple tests.
28. We would also recommend allowing a slightly longer period than 12 months following the purchase of a residence to meet the residency test, to provide greater flexibility for unforeseen circumstances, like work secondments.
29. In terms of whether 1% strikes the right balance between the government’s objectives on home ownership and the UK remaining an open and dynamic economy, we would note that the UK property market is very successful at attracting capital into the renewal of our towns and cities. Any rules which specifically target non-resident investors have the potential to send negative signals and could be damaging to investor sentiment.

30. Chapter 3: Companies, Partnerships and Trusts

31. **Question 5: Do you have any views on the proposed company residence test for the surcharge?**
32. **Question 6: Would you prefer to see a different residence test applied? If so, what test and why?**
33. **Question 7: Do you have any views on non-UK resident individuals using UK resident companies to purchase residential properties?**
34. **Question 8: 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?**
35. **Question 9: Do you have any views on applying the attribution of rights rules at section 451 CTA 2010 between persons of differing residence status?**
36. **Question 10: Do you have any views on potential problems which might arise when using the definition of control at section 450 CTA 2010?**
37. **Question 11: Do you have any views on whether any of the exemptions at S442 to S447 CTA 2010 should remain in place or be removed for the purposes of the surcharge?**
38. **Question 12: Would you prefer to see a different test applied? If so, what test and why?**
39. **Question 13: Do you have any comments on the proposed treatment of partnerships as joint purchasers?**
40. **Question 14: Do you think there should be different test applied for purchases by partnerships? If so, what test and why?**

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41. **Question 15: Do you have any views on the proposed SDLT treatment where the acquisition is made by a trust?**
42. **Question 16: 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 12month period ending with the date of the transaction? If not, why not? What alternatives would you propose?**
43. **Question 17: 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?**
44. There are existing rules which already disincentivise the ownership of homes in companies – in particular, ATED (Annual Tax on Enveloped Dwellings), which includes a 15% rate of SDLT, in addition to an annual tax charge. Therefore, the risk that an individual would choose to envelope their property in order to avoid this surcharge would be negligible. Furthermore, there is an existing surcharge for any individuals or companies buying a second home (the 3% additional dwellings surcharge).
45. We consider that it is therefore unnecessary to extend these measures to companies, particularly given the additional complexity in the rules and the administrative burden this would create.
46. Furthermore, the existing ATED rules already include appropriate safeguards for businesses that use residential property as part of their business; which would help ensure that these rules do not unintentionally have a detrimental impact on housing supply.
47. We appreciate that further thinking would need to be done around partnerships and trusts if the government were to adopt this approach. In general, where these entities have a corporate member, they would fall within ATED and so it would only be necessary for the government to consider how these measures should apply in the context of partnerships or trusts with purely individual members or beneficiaries.
48. **Chapter 4: reliefs and refunds from the surcharge**
49. **Question 18: Do you have any comments about the proposed reliefs from the surcharge?**
50. **Question 19: Are there any other categories of individual which you think the Government should consider providing a relief for and, if so, why?**
51. **Question 20: Do you have any views on the proposed refunds available for those who have paid the surcharge?**
52. **Question 21: Do you have any views on the criteria the government is suggesting determining whether a purchaser would be eligible for a refund?**
53. As noted above, we do not think it is necessary to extend these measures to companies given ATED already disincentivizes the enveloping of properties – and we consider that the existing ATED rules provide appropriate reliefs for businesses that use residential property as part of their trade, which helps to mitigate any potential adverse impact that these measures could have on housing supply.
54. If government chooses to apply this measure to companies; it seems unfair not to allow the same opportunity for non-resident companies to apply for a refund where a non-resident shareholder subsequently becomes UK resident.

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55. **Chapter 5: Existing SDLT reliefs and the surcharge**

56. **Question 22: Do you have any views about how the reliefs will apply in relation to the surcharge?**

57. We consider that the proposed approach in respect of the interaction with SDLT seeding relief is appropriate, whereby the surcharge would not apply where the relevant conditions for the seeding relief are met.

58. **Chapter 6: Other SDLT rules and the surcharge**

59. **Question 23: Do you have any views on the proposed treatment where there is an interaction between existing SDLT rules and the surcharge?**

60. We consider that the approach proposed for mixed use and linked transactions is appropriate, whereby a transaction linked with a commercial property would not be within scope of this surcharge.

61. See appendix 1 for some comments on the use of Multiple Dwellings relief in the context of Build-to-rent transactions.

62. **Administration and compliance with the surcharge**

63. **Question 24: Do you have any views on the proposed approach for administration and compliance for the surcharge above?**

64. **Question 25: Are there any other changes to the administrative and compliance provisions in SDLT that the government should consider changing for the purposes of the surcharge?**

65. As noted earlier in our response, we do not consider that the extension of these measures to companies is necessary given the existing measures which already disincentivise the enveloping of property. While we would not support these measures in the round (given the lack of compelling evidence to suggest that they would support home ownership), restricting these measures to individuals would go some way to simplifying these measures and reducing the administrative compliance associated with the rules.

ⁱ The role of overseas investors in the London new-build residential market, Final report for Homes for London, May 2017 - <https://www.london.gov.uk/moderngovmb/documents/s58640/08b2b%20LSE%20Overseas%20Investment%20report.pdf>