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Why an expensive stamp duty tax trap is looming for returning British buyers

Brits will be considered foreign for tax purposes if they have been abroad for more than six months

By Melissa Lawford
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Unwitting Britons could get slammed by a foreign stamp duty surcharge trap that would cost them tens of thousands extra in tax, experts have warned.
From April 1, foreign buyers purchasing property in the UK must pay an additional two percentage point surcharge across the entire value of the purchase price.
But returning expats and British citizens who are abroad temporarily for work or due to the pandemic may find that they are now considered "foreign" for tax purposes.

Chris Etherington, of RSM consulting services, said: "It is surprisingly easy to be treated as a non-UK resident for stamp duty purposes. Nationality, citizenship and residence status are all irrelevant in determining whether the surcharge applies."

To be treated as UK resident for stamp duty purposes, a buyer must have been present in the UK for at least 183 days in the 12 months to the completion date of the sale. This means that British citizens who have been out of the country for more than six months in the last year will also be liable to pay the surcharge.

Overseas buyer stamp duty bands after September 30

Property value bracket	UK owner occupier	Overseas investor	Overseas owner occupier
up to £125,000	0%	5%	2%
£125,001 to £250,000	2%	7%	4%
£250,001 to £925,000	5%	10%	7%
£925,001 to £1.5m	10%	15%	12%
Above £1.5m	12%	17%	14%

Mr Etherington said: “Individuals may not realise they will be caught by the rules, particularly if they have spent more time outside the UK than they intended due to coronavirus. Rules like these are setting traps for the unwary.”

He added: “There’s no apparent relaxation of these rules in relation to individuals who have genuinely been stuck overseas due to the pandemic.”

The two percentage point surcharge means that a buyer purchasing a £500,000 home – roughly the cost of the average property in London – would pay an extra £10,000 in tax.

If the property was their only home, this would bring their total bill to £25,000. If it was an additional property, they would be forking out £40,000.
For now, the travel restrictions, which are holding back overseas buyers, mean this tax trap has gone largely unnoticed. But a crunch point is looming as lockdown lifts.

Roarie Scarisbrick, of buying agents Property Vision, said: “I don’t think this issue will be fully confronted until travel restrictions ease and we start to see more buyers returning to the market. But expect some shock and indignation as people realise that the criteria for residency is different to that used for general tax calculations.”

The easing of travel restrictions is likely to coincide with the end of the stamp duty holiday in September.

Buyers hit with surprise extra bills are likely to try to renegotiate prices. “I have no doubt that they will expect the seller to bear the brunt of their higher stamp duty bill, so expect some sticky negotiations,” said Mr Scarisbrick.

If a property is being purchased jointly and one purchaser is considered non-UK resident, the foreign buyer surcharge will apply, said Mr Etherington.

Parents who want to help their children onto the ladder could therefore be vulnerable to the tax trap, if they or their child has been overseas for more than six months. Buyers purchasing in married couples or civil partnerships, however, will be exempt if one is considered a UK resident.

Those who are caught out may be able to get their money back, however. There is a system in place to reclaim your right to be deemed resident for the surcharge within 365 days of the transaction, said Mr Scarisbrick.