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**Higher rates of Stamp Duty Land Tax (SDLT)
on purchases of additional residential
properties**

HM Treasury consultation paper
December 2015

1 February 2016

CONSULTATION PAPER ON HIGHER RATE SDLT

Q.1.

Please note that minor children cannot own property.

Yes. The proposed rules do not cater for the situation where a relationship might have broken down and one of the parties has to move out (whether for reasons of safety or otherwise). In those circumstances, why should the party that moves out and may wish to buy a property be penalised by having to pay additional SDLT? It would not be feasible or sensible (whilst a party maybe contemplating separate divorce or other proceedings) for the party that is moving out to remove their name from the title deeds of the existing main residence. The government should be looking to protect individuals in this situation when they are vulnerable, not see them as an additional source of tax. Our proposed solution is that a party in those circumstances should not be obliged to pay additional SDLT at all, nor should they be expected to pay additional SDLT and then seek to reclaim it.

Q.2.

No. It is unfair and inequitable for one person's residential circumstances as a home owner (and therefore their tax status under these proposals) to be used as a rationale to collect additional SDLT from a second person who is not currently a home owner.

The higher rate of SDLT should not be charged across the whole transaction.

SDLT should be charged to those individuals based on their share being held as tenants in common. (For simplicity, we have deliberately not explained the consequences of ownership as joint tenants).

If the additional rate of SDLT was charged to the person who only owned one property following that acquisition, then that person should be credited for that additional SDLT against any future acquisition of a main or any other residence. That person should only be charged SDLT at the standard rate on that subsequent purchase, irrespective of when that purchase might take place. There should not be a time limit, whether of 18 months or other period (see further answers to Question 6 below) on any second acquisition in those circumstances

Q.3.

Yes. There will be practical difficulties for Conveyancers because the Conveyancer will have to rely on the purchaser's evidence that they sold the previous home which was their main residence. It would be impractical for a conveyancer to search at the Land Registry or other public record to verify what the Conveyancer is being told by a purchaser. The cost of attempting to do that would be prohibitive and all purchasers would object to the additional work being done and also having to pay for it.

We do not feel this addresses the question of a falling market where sellers may struggle to sell within the timescale or may have to move to another part of the country whether for work reasons, when they would have no alternative but to move. It also does not address divorcing or separating couples.

Q.4.

No. It is far too subjective and does not cater for personal circumstances that may well change.

Q.5.

No. This is an unreasonable length of time and does not cater for falling house prices generally across the UK or in specific geographical locations. It also doesn't encourage upwards social mobility, which is suggested as one of the main drivers for introducing the additional tax. It is iniquitous for any residential property buyer to lose the benefit of a refund in the circumstances mentioned in this consultation.

It would actually discourage home ownership and people moving house rather than encourage it. The consultation suggests that if the 18 month period is not satisfied, the refund would be lost. This is unfair because there are a whole host of contributory and extraneous factors outside of a home owners' control that could affect house sales/mobility, including the strength of the overall economy and the availability of mortgage finance, to name but two. Home owners should not be penalised for factors outside their control. A far better period would be 5 years.

Q.6.

Yes there should be a refund mechanism but as indicated above 18 months is far too short. There are other circumstances where a refund should be given i.e. separating or divorcing couples; inherited property; property transferred from an aged relative to a younger family member for ease of management/via a Lasting power of attorney; beneficiaries of trusts; or recipients of gifts. The common feature of all these instances (there are others) are that there are unintended and extraneous circumstances which impact on home ownership in a temporary way or where the person is the recipient of a property in such circumstances as they are not really in a position to refuse it.

The Consultation is silent on who is going to be responsible for claiming the refund? If HMRC require proof of a sale and or purchase then there is a danger that Conveyancers could become embroiled in obtaining archived information to provide such proof where clients have mislaid documents. This would lead to unhappy clients if the Conveyancers then ask for a fee for additional work to supply duplicate documents as the Conveyancer would no longer have a retainer with the client.

Q.7.

Yes. Do not charge the additional SDLT in the first place because as the government recognises, this is a cash flow mechanism that implies the government cannot ultimately keep and spend the money. For example, where a married couple separate after say nine months and the leaving party buys another house, if the divorce proceedings then take longer than say 18 months without an Order being made, potentially the party purchasing the new house and who has presumably paid the higher rate on that purchase, will not be eligible for a tax refund if the original house has not sold, whether because of market forces or the other party refusing to give vacant possession. In any event, the party staying in the original house (whether by agreement or as part of a court order) has no extra charges. This is inequitable. In the case of divorcing or separating couples, neither couple should be penalised in these circumstances and we would recommend that additional SDLT should not be charged in those circumstances. Without such a concession, divorcing/separating couples

will almost always have to rent premises first, thereby taking up valuable housing stock that might otherwise be available for others.

Q.8.

The consultation leaves many questions unanswered and is being rushed through with undue haste, having been published on 28 December 2015 and giving only 5 weeks' until 1 February 2016 within which practitioners can respond. The new law is stated to take effect on 1 April 2016.

At paragraph 4.3 the government states that the consultation is being conducted "in accordance with the government's code of practice on consultation". It is not. The code clearly states that consultations should be at least 12 weeks in duration. The consultation then confusingly goes on to say that "at 7 weeks this consultation is shorter than the standard consultation..".

Given the precipitate way this consultation is being conducted we are very concerned that government will have no time to draft the requisite new law, let alone any guidance, that will implement what will be a very complex new tax. Will there be additional staff at HMRC to help administer the new tax? Will new SDLT forms be available to fill in : these will be required given the implications on Conveyancers of having to assess the veracity of the replies as to home ownership made clear by the consultation.

Practitioners are already seeing an artificial and unrealistic increase in activity in the conveyancing market as people seek to buy/sell properties before 1 April.

Further consideration and clarification is required :

- How will the government account for refunds to individuals who have had to pay the additional SDLT?
- When will government publish the law that actually delivers this complex law? If an announcement is to be made as part of the Budget on 16 March that means government will have barely 6 weeks to take account of responses under this consultation, consider them, and draft new law.
- How does the government intend to allocate money to housing, especially if some of those funds would be refundable?

It is generally recognised that tax should be reasonable, proportionate and easy to collect. This does not appear to satisfy any of those tests, and for the alleged sums to be raised (leaving aside the wider question of why only some but not all of the £60m raised will go towards communities where the impact of second homes is particularly acute) when the UK economy is over £1trillion this appears to be unduly complex for little obvious benefit. There are surely better and more cost-effective and efficient ways of raising funds to support this issue e.g. multi-national companies who seek to minimise their tax liabilities in the UK. .

Q.9.

It is usual practice to submit where possible the SDLT on the day of completion or as near to so as to comply with Lenders criteria. In those circumstances it would make very little or no difference whether the test of two or more properties was made upon the day of purchase or within 14 or even 30 days' thereafter. In any event, it would be prudent to have all the facts as early in the transaction as possible in case there are any further queries. Also the Conveyancer would need to advise on any

SDLT implications before exchange because given the introduction last year of affordability tests, buyers will need to understand and confirm that they can afford to buy any residential premises.

Standardised SDLT and other forms asking pertinent questions about number of residences and where they are located needs to be given consideration. The Council of Mortgage Lenders and IFA,s etc. need to be required to have a role to alert buyers to the changes in Higher Rate Tax before it reaches the Conveyancing stage.

Q.10.

Yes. If someone is living abroad and it is their main residence it would seem unjust that they can come to another country and purchase property without paying the same tax as those living in England and Wales or Northern Ireland. It would be usual for anyone purchasing abroad that may be living in England and Wales or Northern Ireland to pay any taxes abroad as the people who already live there. However, consideration should be given where foreign nationals come into the country to work and need a main residence. In those circumstances, such persons should not be penalised by living in the UK and wishing to settle in the UK and have a main residence here.

Q.11.

Yes. If the government will be charging higher rate SDLT on all properties that are owned other than main residences then it would seem that any additional owned property whether it be buy to let or furnished holiday homes should be treated in the same way. There would seem to be no distinction between furnished holiday lets or normal residential lets as they both rent to people occupying the property for rental income.

Q.12.

As already stated if the government are going ahead with the Higher Rate SDLT then it should be across the board for properties where a gain is to be made, whether it be residential buy to let or holiday homes. However government should take into account the fact that, without buy to let Landlords, there will be a shortage of rental properties. This could mean more homeless people as not everyone can afford even a 5% deposit (which is minimum). If there is a shortage of landlords purchasing then there will be more properties staying on the market and could cause another housing slump. There is already a lack of rental properties as councils do not tend to build as many and in fact turn to private landlords to house council tenants. If there are less rental properties for the amount of people requiring rentals, this will push up domestic rental prices.

In our view it would appear to be more prudent to pay a small tax on second or more homes if in fact they were *not* to be rented. Rentals assist homeless and the private landlords are already taxed by way of income tax on the rental and pay capital gains tax in the event of a sale.

Q.13.

Yes. We can see no reason why individual investors should be treated from corporate investors. Conveyances have many clients, both individual and corporate, who invest in residential rental properties. Individuals may have all sorts of reasons why they conduct their business as individuals or within a company set up, but we see no difference in the service they provide to the rental market. Indeed we know of many individuals who have larger portfolios than small property investment companies. Individuals should not be penalised in this way.

Q.14.

We think that the "portfolio" test must be the only sensible test that can be applied. We think that to exempt only those investors who can afford to buy at least 15 properties at the same time will cause serious problems for the small investor (individual or corporate) who has already acquired a sizeable portfolio, albeit at a less ambitious rate than 15 at a time, which in our experience would be very rare for an individual investor. Such a company or individual may well think twice about adding to their stock and may even have to rethink their business plan if the bulk purchase criterion were applied. The latter test would be unduly complex to administer.

However, an additional issue is why the government has fixed on 15 units as the benchmark. If the intention is to increase/improve the availability of affordable housing stock it does not make sense that government is targeting smaller investors from investing in housing as part of a balanced portfolio, especially given the average house price in England and Wales.

Q.15.

It is not obvious what alternative the government has in mind. The consequence of this additional SDLT will be to stymie those relatively small investors who might otherwise have contributed to the wealth of housing stock by buying premises that are then made available to rent. That in itself should not be seen as a brake on investment but that, we fear, will be the consequence of the introduction of additional SDLT. If government wants to bring in a scheme for a wider housing market then all aspects of housing need to be considered. Without a Buy to let investor then a certain proportion of society who either cannot afford to buy or indeed prefer to let, will have nowhere to live. There are many instances where tenants rent for some time due to circumstances and then, having saved enough money, actually purchase the property from the Landlord at a slightly reduced rate. Government can still continue with schemes for buyers to purchase homes with the Help to Buy and ISA Help to Buy but this does not assist those who cannot afford to buy at all.

Q.16.

This question has already been answered in our various responses to questions above. The question portrays a lack of understanding about property ownership in the UK. The nature of the type of owner should not be a significant factor in deciding whether an entity does/does not pay additional SDLT. The proposed system, as set out in the draft consultation, will be over-complicated, labour-intensive but with little obvious gain in terms of additional revenue to direct where additional homes are to be constructed. It is not clear why, for example, all of the said £60m additional tax is not going to be used for additional homes. Why only part and, if so, how much will be retained by government and for what purpose? How will government decide which parts of the UK qualify for the additional SDLT raised - will there be a corresponding fund to which developers/investors can apply? None of this is made clear.

Q.17.

No. As already referred to we do not feel individual investors should be treated any differently to Corporate or non-individual investors. All investors are aiming for the same end and there should be

no distinction. This system will discourage investment, whether by a company or individual, in anything other than the larger schemes in excess of 15 units.

Q.18.

No. The question again portrays a lack of understanding about the investment by trusts into residential properties. This is exemplified by example 38 which talks of "new settlement" when it seemingly ignores the provisions brought in by the Trusts of Land and Appointment of Trustees Act 1996.

The beneficiary is potentially being penalised for being a beneficiary when they will not have had any input into the establishment of a trust or its terms, including where a property is situated. Individuals should not be penalised in their individual capacity, if they happen to be the beneficiary of a trust, of whatever nature. They should also be free, if they wish, to choose whether they purchase premises elsewhere, as their main residence in compliance with any of the tests set out in paragraph 2.8.

Q.19.


As indicated in the answer to Question 9 it would be useful for HMRC to provide a questionnaire which could be completed at the outset of a transaction so that there is no confusion as to the client's position, or, at the very latest, to be completed at the time when the SDLT return is completed. However, Conveyancers are aware that some clients can be disingenuous and this could be more prevalent if by doing so, they save themselves a large amount of tax. The important thing is to make sure that it is not the Conveyancer who becomes liable for the misrepresentation by the buyer

Q.20.

No. This would not help because if a client wishes to mislead their Conveyancer, they will do so notwithstanding any such formal declaration. The only true deterrent would be fines in the case of misinformation provided to the Conveyancer but how this would be policed would be down to HMRC.

Q.21.

An easy access Calculator. However due to the complexities of the exemptions, the way the delayed sale and purchase fit together and other scenarios fit together we feel members of the public would be confused and would then be giving misinformation due to the fact that there may be a genuine misunderstanding



Mushtaq Khan
President
Birmingham Law Society

