

Stamp duty land tax: ensuring fairness for all a consultation document

December 2007



HM TREASURY



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**Stamp duty land tax:
ensuring fairness for all
a consultation document**

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INTRODUCTION

1.1 Stamp duty land tax (SDLT) is a transaction tax, payable by the buyer, on the purchase of land or property, or any consideration for the acquisition of an interest in land or property. It is administered and collected by the Stamp Taxes business stream within HM Revenue and Customs (HMRC).

1.2 The 2007 Pre-Budget Report stated that: “The Government believes that the use of special purpose vehicles to reduce stamp duty liability on high value residential property is unfair to the compliant majority who pay SDLT on the purchase of such property in the UK. The Government will also consult with interested parties later this year on the issues involved in implementing a measure to address this issue.”

1.3 This document sets out for consultation how the Government intends to address the increasing use of special purpose vehicles (SPVs) on high value residential transactions and seeks to explore the practicalities of introducing a charge on the use of SPVs.

1.4 The Pre-Budget Report also announced that: “Following on from action in 2006-07 on SDLT avoidance, the Government will continue to tackle SDLT avoidance, while ensuring that the competitiveness of the UK is not harmed. The Government will consult interested parties later this year on how to extend the disclosure regime to high value residential property transactions”.

1.5 This document also sets out the case for extending the SDLT disclosure regime currently applied to non-residential transactions above £5 million to residential transactions above £1 million.

1.6 The Government would be interested in views on the specific questions raised in this consultation document. The Government would also welcome any comments on the partial impact assessment attached as an annex to this document.

2

USE OF SPECIAL PURPOSE VEHICLES

2.1 This chapter sets out for consultation the issues involved in implementing a measure to address the use of special purpose vehicles (SPVs) on high value residential property.

2.2 There is anecdotal evidence that some individuals transfer high value residential property in the UK into special purpose vehicles (SPVs). These are companies, or other entities such as Trusts, created solely for the purpose of carrying out tax avoidance.

2.3 When shares in the SPV are sold to a purchaser, the purchaser effectively becomes the beneficial owner of the property. One of the consequences of transferring property into an SPV in this way is that it avoids the need to pay SDLT on the disposal of that property. The Government believes that this activity is unfair to the compliant majority who pay SDLT on the purchase of residential property in the UK.

Stamp Duty Reserve Tax **2.4** If the company is registered in the UK, the transfer of shares and securities are liable to stamp duty or stamp duty reserve tax (SDRT), which was introduced in 1986. The Government is not minded to make any alterations to this regime.

Imposing a Charge **2.5** The Government wants to explore the issues involved in creating a charge on SPVs used for high value residential property. The charge, which could be known as the Indirect Charge, would approximate to the SDLT that would be due if the property contained in the vehicle had been transferred directly to a new owner as a land and property transaction as opposed to a transaction in shares. This would remove any SDLT advantage from putting the property in an SPV compared with the direct transfer of UK residential property.

Structure of the Charge **2.6** To focus the charge on the intended target – SPVs that reduce SDLT liability on high value residential property - the Government has considered 3 possible tests. The ‘Indirect Charge’ should only apply where there is an acquisition of a substantial interest (test 1) in a company which is in limited ownership (test 2) and which is a property company (test 3). One of the purposes of this consultation is to identify if these tests are fit for purpose and also to explore if there are other tests and conditions that need to be attached to such a charge if it is to achieve its goal and avoid any unintended consequences.

Test 1: Substantial Interest Test **2.7** The Government proposes to apply a 75% ownership test. This means that at least 75% of the SPV must be acquired in order for the charge to apply. The 75% ownership test is necessary to provide the acquirer with a substantial degree of control over the company. Unless a substantial degree of control is acquired it is not possible to regard the transaction as a proxy for the direct transfer of UK land/property.

2.8 There are a number of ways in which attempts could be made to by-pass this threshold artificially. The Government is examining the possibility of accompanying this test with specific rules to prevent a purchase being fragmented with the purpose of avoiding the 75% threshold.

Test 2: Limited Ownership Test **2.9** This test focuses the charge on the type of SPV being used for SDLT avoidance on high value residential property. Such vehicles are generally subsidiaries of companies or companies owned by a small number of entities, which are readily able to use them for the purposes of avoidance. A “limited ownership” company for the purposes of the indirect charge could be a company that was controlled (meaning a

51% controlling interest) by 5 or fewer persons (individuals or companies).

Test 3: Property Company Test **2.10** This test will determine whether the SPV being used for high value residential property contains a sufficiently high amount of assets comprising of UK residential property to be described as a ‘property company’. The Government proposes to set this percentage at 90% of the SPV’s assets in order to ensure that the charge is targeting vehicles whose value is essentially pure property. The 90% test would be calculated based on the market value of the gross assets of the SPV at the time a substantial acquisition of the SPV’s shares was made.

2.11 To prevent avoidance of this test we need to ensure assets could not be purchased or created to deliberately fall below the 90% threshold. To prevent this one option the Government proposes is to calculate the underlying property ratio excluding cash and other marketable securities.

Calculation of the Charge **2.12** The Government proposes to impose the charge on vehicles worth £1m or more and to set the tax rate at 4 per cent in line with the current top rate of SDLT for residential property transactions. This means that an SPV holding residential property would be liable for tax at 4 per cent on the transfer of shares if the conditions set out in the 3 tests were met and if the value of assets held by that SPV were £1 million or above.

Impact on Housing Market **2.13** According to figures published by HMRC¹ in 2006 there were a total of about 1.6 million (£300 billion in value) property transactions carried out by individuals in England and Wales. Of these only 11,000 or 0.7 per cent (£23 billion in value or 7.7 per cent) involved properties worth £1 million or above. The Government believes that only a small fraction of these will make use of SPVs. The Government is therefore of the view that introduction of the charge would have very little impact on the residential property market.

Compliance Burden **2.14** The Government proposes to adapt the existing SDLT return to accommodate an indirect charge on high value residential property. This will help to keep the administrative burden on business to a minimum.

Questions for consultation

Q1 – Is SDLT a consideration in deciding whether to use an SPV to wrap a high value residential property in the UK?

Q2 – Are there any reasons other than reducing tax liability to use an SPV to wrap a high value residential property in the UK?

Q3 – Are there ways to prevent the avoidance of tests 1, 2 and 3?

Q4 – What are the most common features of SPVs used for avoidance of SDLT on high value residential property?

Q5 – Are SPVs used for residential property below £1m?

Q6 – Do you agree that the impact on the housing market of these proposals would be minimal?

¹ http://www.hmrc.gov.uk/stats/survey_of_prop/table16-1.pdf

3

DISCLOSURE REGIME

3.1 The Pre-Budget Report also announced that: “Following on from action in 2006-07 on SDLT avoidance, the Government will continue to tackle SDLT avoidance, while ensuring that the competitiveness of the UK is not harmed. The Government will consult interested parties later this year on how to extend the disclosure regime to high value residential property transactions”.

3.2 The Tax Avoidance Scheme Disclosure Regime requires certain persons, normally the promoter of the scheme, to disclose to HMRC information about a tax scheme where one of the main benefits that might be expected from using the scheme is a reduction of SDLT on commercial property with a value of at least £5 million. The regime has informed a number of SDLT anti-avoidance measures in Finance Acts 2006 and 2007.

3.3 There is evidence that specialist promoters are marketing schemes aimed at buyers of high value residential property and the Government proposes to extend the current SDLT disclosure rules to schemes that concern residential property with a value of at least £1 million.

Questions for consultation

Q7 – Do you agree that the SDLT disclosure rules should be extended to residential property worth £1 million or more?

4

ISSUES FOR CONSULTATION

Closing date and address for responses

- 4.1** The closing date for this consultation is Friday 8 February 2008.
- 4.2** The consultation is running less than the standard twelve weeks because the issues covered are largely technical and of interest to a small number of stakeholders. In 2006 out of a total of 1.6 million residential property transactions in England and Wales, only 11,000 involved property above £1 million and only a small number of these make use of SPVs.

- 4.3** Responses to the consultation should be sent either by post to:

Jamil Mohamed
Property Tax Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Or Email: jamil.mohamed@hm-treasury.gsi.gov.uk

- 4.4** A summary of responses to the consultation document will be published soon after the closing date for consultation responses. A further announcement will be made at Budget 2008.

Confidentiality Disclosure

4.5 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

4.6 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

4.7 The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Summary: Intervention & Options

| | | | |
|---|-------------------|--|--|
| Department /Agency: HM Treasury | | Title: Impact Assessment of 'Stamp Duty Land Tax (SDLT) - Ensuring Fairness for All' | |
| Stage: Consultation (Draft) | Version: 1 | Date: 17 December 2007 | |
| Related Publications: | | | |

Available to view or download at:

<http://www.>

Contact for enquiries: Jamil Mohamed

Telephone: 020 7270 6057

What is the problem under consideration? Why is government intervention necessary?

Using special purpose corporate vehicles (SPVs) may be set up as companies or some other securities (e.g a Trust) to transfer high value residential UK property to avoid SDLT on the disposal of that property if it remains SPV 'wrapped'. The Government believes this is unfair to the compliant majority who pay SDLT on the purchase of residential property. Similarly the use of avoidance schemes to avoid paying SDLT on high value residential property is unfair to the compliant majority. There is not at present any obligation to notify schemes involving residential property.

What are the policy objectives and the intended effects?

The Government would like to ensure that SDLT is paid on the purchases of all residential properties in the UK. This helps to ensure the tax system is fair and transparent, and protects the Exchequer as lost tax revenue undermines the Government's investment in public services such as schools and hospitals. It will also help identify all persons who have used disclosed tax schemes in order for HMRC to target its compliance resources effectively and efficiently.

What policy options have been considered? Please justify any preferred option.

Option 1: Do Nothing

Option 2: Introduce a charge on SPVs containing residential property that is equivalent to SDLT and extend the SDLT disclosure regime currently applied to commercial property transactions to residential property transactions.

The Government is concerned that "doing nothing" could encourage further use of SPVs and the use of schemes to avoid SDLT. This could represent an area of increasing fiscal risk to the Exchequer and undermine fairness in the tax system.

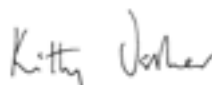
When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

If following consultation the Government decided that there was a need to take action it would keep the effects of that measure under review as part of the Budget process.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



.....Date: 17 December 2007

Summary: Analysis & Evidence

| | |
|-------------------------|--|
| Policy Option: 2 | Description: Introduce a charge on SPVs containing residential property and extend the SDLT disclosure rules to residential property transactions |
|-------------------------|--|

| | | | | |
|--|---|------------|---|--------------|
| COSTS | ANNUAL COSTS | | Description and scale of key monetised costs by 'main affected groups' This measure will primarily affect the compliance costs of currently non-compliant individuals. The extension of the disclosure rules will also affect a small number of compliant taxpayers where schemes that are not avoidance are reported. | |
| | One-off (Transition) | Yrs | | |
| | £ Negligible | | | |
| | Average Annual Cost (excluding one-off) | | | |
| | £ Negligible | | Total Cost (PV) | £ Negligible |
| Other key non-monetised costs by 'main affected groups' | | | | |

| | | | | |
|---|--|------------|---|---|
| BENEFITS | ANNUAL BENEFITS | | Description and scale of key monetised benefits by 'main affected groups' Tax avoidance reduces the Government's revenues, affects its ability to meet its spending objectives, increases Government borrowing and causes the market to allocate resources unproductively. Closing loopholes prevents this welfare loss. It also leads to greater fairness and transparency. | |
| | One-off | Yrs | | |
| | £ | | | |
| | Average Annual Benefit (excluding one-off) | | | |
| | £ | | Total Benefit (PV) | £ |
| Other key non-monetised benefits by 'main affected groups' | | | | |

Key Assumptions/Sensitivities/Risks

| | | | |
|--------------------|----------------------|-------------------------------------|---|
| Price Base Year | Time Period Years | Net Benefit Range (NPV) £ | NET BENEFIT (NPV Best estimate) £ |
|--------------------|----------------------|-------------------------------------|---|

| | | | | | |
|---|--|----------------|--------|--------|-------|
| What is the geographic coverage of the policy/option? | | United Kingdom | | | |
| On what date will the policy be implemented? | | TBC | | | |
| Which organisation(s) will enforce the policy? | | HMRC | | | |
| What is the total annual cost of enforcement for these organisations? | | £ TBC | | | |
| Does enforcement comply with Hampton principles? | | Yes/No | | | |
| Will implementation go beyond minimum EU requirements? | | Yes/No | | | |
| What is the value of the proposed offsetting measure per year? | | £ n/a | | | |
| What is the value of changes in greenhouse gas emissions? | | £ nil | | | |
| Will the proposal have a significant impact on competition? | | No | | | |
| Annual cost (£-£) per organisation (excluding one-off) | | Micro | Small | Medium | Large |
| Are any of these organisations exempt? | | Yes/No | Yes/No | N/A | N/A |

| | | |
|---|---------------|-----------------------|
| Impact on Admin Burdens Baseline (2005 Prices) | | (Increase - Decrease) |
| Increase of £ | Decrease of £ | Net Impact £ |

Key:

(Net) Present Value

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

1. Stamp duty land tax (SDLT) is a transaction tax, payable by the buyer, on the purchase of land or property, or any consideration for the acquisition of an interest in land or property. It is one of three property related taxes - the other two are council tax and business rates. SDLT is administered and collected by the Stamp Taxes business stream within HM Revenue and Customs (HMRC).
2. As part of a major modernisation in Finance Act 2003, stamp duty (on documents) was replaced by stamp duty land tax (on the transaction itself) with effect from 1 December 2003. SDLT is also charged on grants of new leases of land and buildings both on the premium (capital sum paid by the purchaser) and on the rental element.
3. Current SDLT rates & thresholds applicable to residential property are:

| RATE (%) | THRESHOLD (£) |
|---|-----------------|
| 0 | 0-125,000 |
| 1 | 125,001-250,000 |
| 3 | 250,001-500,000 |
| 4 | +500,001 |
| * Starting residential threshold in 2,000 deprived areas is £150,000. | |

4. In 2005 the Government introduced rules for commercial property transactions above £5m requiring information about certain tax schemes and arrangements to be disclosed to HMRC. This was so that HMRC could tackle SDLT avoidance in a more targeted way and for the Government to more quickly counteract schemes which sought to defeat its tax policy objectives.
5. However, since then we have become aware of some anecdotal evidence suggesting that there are promoters of avoidance schemes for high value residential property. The most prominent example involves moving the ownership of high value residential properties into a special purpose company or trust; this is known as Special Purpose Vehicle (SPV) wrapping. This means that the beneficial ownership of the property asset can be transacted through the exchange of the shares of the SPV rather than the underlying asset. This will incur 0.5% Stamp Duty Reserve Tax (SDRT) for on-shore incorporated vehicles or 0% for offshore or non-incorporate wrappers. This is significantly less than the 4% SDLT paid on direct transfers of high value properties.
6. The use of SPVs and avoidance schemes for high value residential property presents a fiscal risk to the Exchequer and undermines fairness and transparency in the tax system.

Policy Options

Policy Option 1

7. Do Nothing

Policy Option 2

8. Introduce a charge, equivalent to SDLT, on SPVs containing residential property worth over £1m and extend the SDLT disclosure rules to residential property transactions worth over £1m – as set out in the consultation document.

Evidence Base

9. As with all planning activity, the nature of SPV wrapping means that very little hard evidence exists. However, HMRC data suggests that in 2006 there were a total of about 1.6 million (£300 billion in value) property transactions carried out by individuals in England and Wales. Of these only 11,000 or 0.7 percent (£23 billion in value or 7.7 percent) involved properties worth £1 million or above. Anecdotal evidence suggests that only a relatively small fraction of these will make use of SPVs. The Government is therefore of the view that introduction of the charge would have very little impact on the residential property market.

Tests

Competition Assessment

10. The OFT outlines four criteria for a Competition Assessment, asking whether the measure would:

- Directly limit the number or range of suppliers?
- Indirectly limit the number or range of suppliers?
- Limit the ability of suppliers to compete?
- Reduce suppliers' incentives to compete vigorously?

11. As this measure is likely to effect so few transactions it will have a limited impact on the property market or property services market and therefore the answer to each of these questions is no.

Small Firms Impact Test

12. This measure will have little or no impact on small firms. We expect the number of promoters of avoidance schemes specifically applied to residential property only to be relatively small. Residential property transactions above £1m only account for about 0.7% of total residential property transactions.

Legal Aid Impact Test

13. The measure will introduce new criminal and civil sanctions but the precise nature of these sanctions are yet to be determined.

Environmental / Social / Sustainable Development Tests

14. None

Other Impacts

15. In 2006-07 approximately half of residential SDLT yield came from London and South East of England. In 2006-07 there were about 12,000 residential transactions in the UK involving property above £1m of which just less than 9,000 took place in London and South East of England. Therefore, this measure would have most impact on these two regions of the UK

Implementation and Delivery / Post-Implementation Review / Enforcement, Sanctions and Monitoring

- 16.TBC - The Government is at this stage only consulting on the practicalities of these measures and if it were minded to proceed with these measures then it will set out further details of how it intends to implement, deliver, review and enforce them.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment | Yes | No |
| Small Firms Impact Test | Yes | No |
| Legal Aid | Yes | No |
| Sustainable Development | Yes | No |
| Carbon Assessment | Yes | No |
| Other Environment | Yes | No |
| Health Impact Assessment | Yes | No |
| Race Equality | Yes | No |
| Disability Equality | Yes | No |
| Gender Equality | Yes | No |
| Human Rights | Yes | No |
| Rural Proofing | Yes | No |

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