

# **Stamp duty land tax: ensuring fairness for all – a consultation response**

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April 2008



HM TREASURY





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

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# INTRODUCTION

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**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** Last December the Government published a consultation document setting out the case for extending the SDLT disclosure regime, currently applied to non-residential transactions above £5 million, to residential transactions above £1 million. The consultation document also set out how the Government intended to address the increasing use of special purpose vehicles (SPVs) on high value residential transactions in order to minimise SDLT liability and sought to explore the practicalities of introducing a charge on the use of SPVs.

**1.3** The Government would like to express thanks to those who responded to this consultation. Twenty written responses were received and a list of respondents can be found in an annex to this document.

**1.4** The Government announced in Budget 2008 that it will legislate later in 2008 to extend the SDLT disclosure rules to residential property worth £1 million or above. Following this announcement the Government publishes today its formal response to this aspect of the consultation.

**1.5** Chapter 2 of this document summarizes the written responses received and chapter 3 sets out the Government's response and the next steps including the timetable for consulting on and introducing the draft secondary legislation.

**1.6** The Government is still considering responses on the aspect of the consultation that deals with the use SPVs to reduce SDLT liability on high value residential property.



# 2

## SUMMARY OF RESPONSES

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**2.1** The consultation document published last December said that there was evidence that specialist promoters were marketing schemes aimed at buyers of high value residential property. The Government therefore proposed to extend the current SDLT disclosure rules, to schemes that concern residential property with a value of £1 million or above.

**2.2** It sought views on whether the SDLT disclosure rules, currently applied to commercial property worth at least £5 million, should be extended to residential property worth £1 million or above.

**2.3** Below is a summary of responses to this proposal.

- There were twenty written responses to the consultation. Of these replies six did not mention the disclosure proposal at all whilst five were in favour of it. Three respondents suggested that the proposed threshold for disclosing schemes was too low and would lead to disclosure of routine transactions where no avoidance was intended. They suggested a threshold of £5 million, as applies currently to non-residential property.
- Two respondents were concerned that if “normal” transactions were caught the administration burden on conveyancers would be increased. Another four respondents shared the concern that extending the scheme would lead to increased administration burdens for the sector.
- Five respondents saw the introduction of disclosure requirements for residential property as being disproportionate to the size of the avoidance risk.
- One respondent suggested that HMRC should publish a list of acceptable types of arrangements which it did not want conveyancers to notify them about.
- One respondent noted that if the residential disclosure scheme was structured in the same way as the non-residential scheme it would be of little use because structuring a sale of a residential property by way of a corporate sale may not constitute a notifiable transaction and would not require disclosure.



# 3

## GOVERNMENT'S RESPONSE

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### Government's response

**3.1** The Government welcomes the responses to the consultation and has noted the number of concerns expressed about the detail of implementing an extension of the SDLT disclosure regime to residential property.

**3.2** The Government will have informal discussions with key stakeholders before draft regulations are exposed for consultation in order to ensure that the final regulations narrowly target avoidance behaviours.

**3.3** The Government considers that regulations that are narrowly targeted will impose only a negligible and proportionate increase in administration burden on solicitors, conveyancers and others.

**3.4** The Government considers that this measure is proportionate to the size of the avoidance risk. Avoidance schemes are unfair to the majority of taxpayers who pay their fair share of tax and undermine the funding of public services. The Government is determined to adopt a robust approach in countering these; including closing schemes down by legislation before tax loss grows.

**3.5** The Government considers that a threshold of £1 million is the appropriate level for residential property. There are a number of reasons for this:

- HMRC is aware of marketed avoidance schemes targeting residential property down to this value;
- Residential property is lower in price than commercial property. Specifically, as highlighted in the Consultation Document, only 0.7% of the 11,000 property transactions carried out by individuals in England and Wales in 2006 involved properties worth £1 million or above. Based upon 2003-04 statistics, the £5million threshold for the commercial property disclosure regime represented 0.8% of commercial property transactions when it was introduced in 2005.

**3.6** The Government is concerned to ensure that the descriptions of schemes required to be disclosed narrowly target tax avoidance and do not require promoters, or others, to disclose any significant amount of schemes that either are not avoidance or are schemes that HMRC already knows about.

**3.7** The Government does not exclude the possibility of publishing a list of acceptable types of arrangement which would not require disclosure. However, experience of such lists indicates that avoiders often try to structure schemes to resemble items on the list, or use an excepted item as a constituent part of a wider scheme.

**3.8** In response to the technical point that the sale of residential property by way of a corporate sale may not constitute a 'notifiable transaction, the final regulations will be drafted so that this is not an issue.

## Next Steps

**3.9** Extending the SDLT disclosure regime to residential property worth £1 million or above requires secondary legislation only. The Treasury will use existing powers in Part 7 Finance Act 2004 to make regulations prescribing the descriptions of schemes required to be disclosed ('descriptions regulations'). These regulations are subject to the annulment (i.e. negative) procedure.

**3.10** The Government intends to publish draft regulations for consultation with key stakeholders, with an updated consultation stage impact assessment, before the summer recess with a view to introducing the legislation in Parliament in the autumn.

# A

## LIST OF CONSULTATION RESPONDENTS

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**A.1** The following individuals and organizations submitted written responses to the consultation.

- Asset Trust Housing Ltd
- Baker Tilly and Advisory Services
- Birketts LLP
- British Property Federation
- Chartered Institute of Taxation
- Deloitte and Touche LLP
- Ernst and Young LLP
- Eversheds LLP
- Gibson, Dunn and Crutcher LLP
- Gide Loyrette Nouel
- Grant Thornton
- Halifax Bank of Scotland
- Investment Property Forum
- Law Society of England and Wales
- Lawrence Graham LLP
- Linklaters LLP
- NABARRO
- Royal Institute of Chartered Surveyors
- Stamp Taxes Practitioners Group
- UK PriceWaterhouseCoopers

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