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

General Features

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CIOT and ATT respond to the HMT consultation

The CIOT responded to HM Treasury's consultation on higher rates of stamp duty land tax (SDLT) on purchases of additional residential properties, published on 28 December 2015. The CIOT pointed out that the short period in which to respond (deadline 1 February 2016), given such a radical change to the regime, was challenging, both for those giving their views and for HMRC in implementing the changes by 1 April 2016.

The CIOT had a number of key concerns:

- The apparent inconsistency in the proposals that those who already own a buy-to-let property but have not yet bought a main residence will be subject to the higher rate on the purchase of a (first) main residence. By contrast, a person who sells a main residence can acquire a buy-to-let and later replace their main residence without incurring the higher rates on either transaction.
- The imposition of the higher rates will impose greater complexity on the SDLT regime, which is not designed to make decisions about how a purchaser intends to use a property. The burden of administering the complexities of the higher rates will fall largely on conveyancers who may not have tax expertise.
- The intention is to treat married couples and civil partners living together as one unit unless separated under a court order or by a formal deed of separation under seal. We recommended extending the definition of separation to include factual separation in circumstances in which the split is likely to be permanent.

- A joint purchase may be made for reasons that have a clear social value and that are not contrary to the stated policy intent. Therefore imposing higher rates on the entire consideration appears inequitable. However, these inequities might be mitigated by a targeted relief for situations that accord with the policy intent such as parents helping children on to the housing ladder.
- We noted that it is intended that similar factors as for CGT private residence relief (PRR) will be used to determine whether a UK property is a main residence. Although there will be no right to elect which is the main residence for SDLT, it would be a useful simplification if existing CGT PRR elections were regarded as indicative for SDLT higher rates purposes. The complexities in determining a main residence should not be under-estimated.
- We suggested that a targeted relief from the higher rate is considered if the purchaser of the 'old' main residence defaults after exchange.
- In terms of property interests worth less than £40,000, we agree that a disregard by reference to value should be workable in most cases but we are concerned that the valuation of a lease may present difficulties. Consideration might be given to a disregard of a lease of fewer than seven years.

The CIOT's full response can be read here.

The ATT also responded to the consultation. Some of its concerns included:

- Treating married couples and civil partnerships as 'one unit' after marriage is ignoring the key principles of legal ownership and independent taxation. The ATT did not accept the argument that, because such couples are treated as 'one unit' for the purposes of claiming main residence relief (for CGT), this concept should be extended to the extra SDLT charge. Instead, it counter-argued that, if just one spouse owned a buy-to-let property, only that individual should be taxed on the rental income and only one CGT annual exempt amount would be available if the buy-to-let were sold. For all other purposes of income tax and capital gains tax, the tax treatment follows the legal ownership, so the SDLT charge should do the same.

Read the full submission here.

Meanwhile, the CIOT responded to the finance committee of the Scottish parliament's call for evidence on the proposed land and buildings transaction tax (LBTT) supplement on additional residential homes. The supplement was announced

in the Scottish draft budget for 2016-17, published in December 2015, and it corresponds to the proposal for SDLT.

Again, the CIOT noted the short timeframe and lack of a full consultation as potentially causing difficulties in producing good legislation, while acknowledging that the Scottish government felt it necessary to react to the UK government's equivalent proposal for SDLT.

Given the Scottish government's stated commitment to a tax system that has regard to Adam Smith's four principles, we raised concerns that the proposal would not fulfil this commitment. For example, we believe it will lead to uncertainty and the tax will not be convenient to pay.

Many of the CIOT's concerns on the additional SDLT charge also arise in relation to the LBTT supplement, and so are not reproduced here.

It is likely that the legislation (published at the end of January 2016) will be passed by the Scottish parliament by the end of March, with the intention of the measure taking effect from 1 April 2016. Revenue Scotland will publish guidance, on which it will engage with stakeholders such as the CIOT.

Read the full CIOT response here.