



HM Treasury

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

summary of consultation responses

March 2016



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Foreword

Owning a home is an aspiration for millions of people in our country. This government is committed to helping people achieve that aspiration, by supporting those who want to work hard, save and buy their own home. Home ownership is also a key part of the government's plan to provide economic security for working people at every stage of their life.

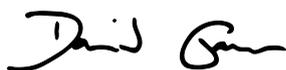
In the last Parliament, we took significant steps to support housing supply and low-cost home ownership, and at the Spending Review and Autumn Statement 2015 we went further by announcing a bold Five Point Plan for housing. The Plan re-focuses support for housing towards low-cost home ownership for first-time buyers.

Alongside delivering 400,000 affordable housing starts by 2020-21, extending the Right to Buy to housing association tenants, accelerating housing supply and introducing London Help to Buy, the Five Point Plan includes the introduction of higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties. The measure is designed to try and redress the balance between those who are struggling to buy their first property and those who are able to invest in additional properties.

The higher rates will be 3 percentage points above the current SDLT rates, and will take effect on and after 1 April 2016. The government will use some of the additional tax collected to provide £60 million for communities in England where the impact of second homes is particularly acute.

The tax receipts will also help towards doubling the affordable housing budget. This will help first time buyers and is part of the government's commitment to supporting home ownership.

The government is grateful to those who have contributed to the consultation. We have considered the concerns raised and, where appropriate, made changes. The details of responses received and the final policy design are set out below.



David Gauke

Financial Secretary to the Treasury

Executive summary

At the Spending Review and Autumn Statement 2015, the Chancellor announced that, on and after 1 April 2016, higher rates of Stamp Duty Land Tax (SDLT) will apply to purchases of additional residential properties, such as second homes and buy-to-let properties. The higher rates will be 3 percentage points above the current SDLT rates and will apply to purchases of additional residential properties in England, Wales and Northern Ireland.

The higher rates form part of the government's commitment to support home ownership and first-time buyers. Given a free choice, almost 90% of people say they want to own their own home.¹ However, only 63% of people in England owned their own home in 2013-14, and this figure has been falling since 2003.² HMRC estimate that in 2014-15 around 13% (160,000) of all residential property transactions were for second homes and buy-to-let properties. In June 2015, there were 1.7 million outstanding buy-to-let mortgages. This represents 16% of the total stock of residential mortgages by value. This is up from 12% of the stock in 2008 and 4% of the stock in 2002.³ The proportion of owner occupiers aged 25 to 34 fell from 59% in 2003-04 to 36% in 2013-14.⁴

Consultation overview

A formal consultation on the design of this policy was held from 28 December 2015 until 1 February 2016. HM Treasury received and considered 909 responses to this consultation. These included submissions from 59 representative bodies, 46 solicitors and conveyancers, 92 corporate investors and developers, 631 individuals and 81 from other organisations including charities. Respondents were based in many different parts of the country and were involved in various aspects of the property market.

During the consultation, government officials met with a large number of stakeholders, industry professionals and representative bodies. These stakeholders provided valuable input into the development of the final policy design. The views expressed at these meetings have been incorporated into this summary of responses.

The government is grateful to all those who contributed to the consultation process. A list of respondent organisations is available in Annex A, and a list of meeting attendees is contained in Annex B.

Summary of respondents' views

Consultation respondents had a range of views on the introduction of the higher rates of SDLT on purchases of additional residential properties. The government's support for home ownership and first-time buyers was welcomed by many respondents. A number of alternative approaches to the design were suggested, and respondents also made a number of points regarding the implementation of these changes.

This document covers each question posed in the consultation, notes the main themes expressed by respondents when replying, and the government's response. It sets out the key

¹ British Social Attitudes Survey 2014

² English Housing Survey, 2013-14

³ Council for Mortgage Lenders, 2015

⁴ English Housing Survey, 2013-14

changes the government is making on the basis of the consultation, along with an explanation for each of these.

Changes to the policy design following consultation

Additional support for those moving home

The government is clear that the higher rates of SDLT are not intended to impact those people who are moving from one main residence to another and are disposing of a previous main residence. To offer protection in this instance, the consultation proposed that:

- purchasers with more than one property who dispose of a main residence, have 18 months to buy a new main residence before the higher rates apply assuming they retain their additional property.
- in the event that purchasers are subject to the higher rates of SDLT because they buy a new main residence before disposing of their previous main residence, they are entitled to a refund from the higher rates of SDLT if they dispose of their previous main residence within 18 months.

Many of the consultation responses discussed a wide range of hard cases which would benefit from a longer timeframe in both of these instances, owing to the additional difficulty in selling or buying a property. These difficult circumstances included those whose home has been affected by flooding, those going through divorce proceedings and those suffering from ill health.

The government has decided to increase the 18 month period to 36 months, for both of the scenarios set out above, as the most appropriate way to provide additional support. This change gives extra time to those who are moving home in challenging circumstances to rearrange their affairs.

The 36 month time period will commence from 25 November 2015 for those who had sold a previous main residence prior to the Spending Review and Autumn Statement 2015, in order to provide additional transitional support.

Removal of proposed exemption for large scale investors

The Spending Review and Autumn Statement 2015 indicated the government would consult on an exemption from the higher rates for corporates and funds making significant investments in residential property, given the role of this investment in supporting the government's housing agenda. It was suggested that an exemption might be based on a portfolio test applying to purchasers who had an existing portfolio of 15 or more residential properties.

The consultation document suggested an alternative approach, with an exemption from the higher rates for a purchaser who bought a minimum number of residential properties in one transaction, a "bulk purchase test". It also suggested that individuals could be eligible for an exemption if one was included in the final policy design. The government was clear that the aim of any exemption would be to directly target entities or transactions that contribute to an overall increase in housing supply. Respondents to the consultation were invited to express their view on both the principle and the design of an exemption.

A number of individual respondents expressed their view that an exemption targeted at large scale investors would not be fair and that the higher rates should apply consistently, to all

purchasers of additional residential properties. Of those in favour of the exemption, the majority of respondents preferred one based on a portfolio test.

Taking on board the views expressed during the consultation, the government has carefully considered this issue further. It has also considered the practical aspects of how an exemption might work and the existing support within the SDLT system for significant investors.

On balance, following an assessment of the evidence provided in response to the consultation, the government's view is that the evidence suggesting that in the absence of an exemption there would be an adverse and material effect on housing supply is not compelling. Whilst the higher rates may have some effect on off-plan purchases, the government's view is that the overall effect on housing supply is not material and housing developments will remain attractive for corporate investors as well as potential home owners.

The government has had regard to the significant support it is offering to the housing market more generally, for example through government-led schemes which are designed to support an increase in housing supply. The Private Rented Sector guarantee scheme offers significant support for investors in the rental market. The government also notes the existing flexibilities within the SDLT system available to significant investors in the property market.

In light of this, **the government has decided to apply the higher rates equally to all purchasers without an exemption for significant investors.**

Other changes

As a result of the consultation, the government has decided to make the following additional changes to the original policy.

The government has decided that married couples who are living separately in circumstances that are likely to become permanent will not be treated as one unit for the purposes of this policy. The government has listened to those respondents who suggested that the originally proposed definition of separation did not account for situations where couples had separated but had chosen not to divorce formally.

The government has decided that when applying the higher rates, a small share (50% or less) in a single property which has been inherited within the 36 months prior to the transaction will not be considered as an additional property. This is intended to provide flexibility for purchasers who may find it difficult to dispose of a share in a property quickly.

Next steps

The government will legislate for the changes in Finance Bill 2016 and the higher rates will apply to purchases which complete on or after 1 April 2016.

HMRC will provide detailed guidance on the changes which will set out how they apply in practice.

1 Summary of responses

1.1 This chapter summarises the key issues and points raised by the respondents to the consultation. It provides the government's response and highlights the changes that will be made to the design of the policy.

1.2 The consultation document set out the government's proposed policy design. In general, purchasers buying their first property, replacing a main residence (even if the purchaser owns more than one property) or buying an additional property worth less than £40,000 will not be subject to the higher rates.

1.3 As set out in figure 1. the higher rates **will not apply** if:

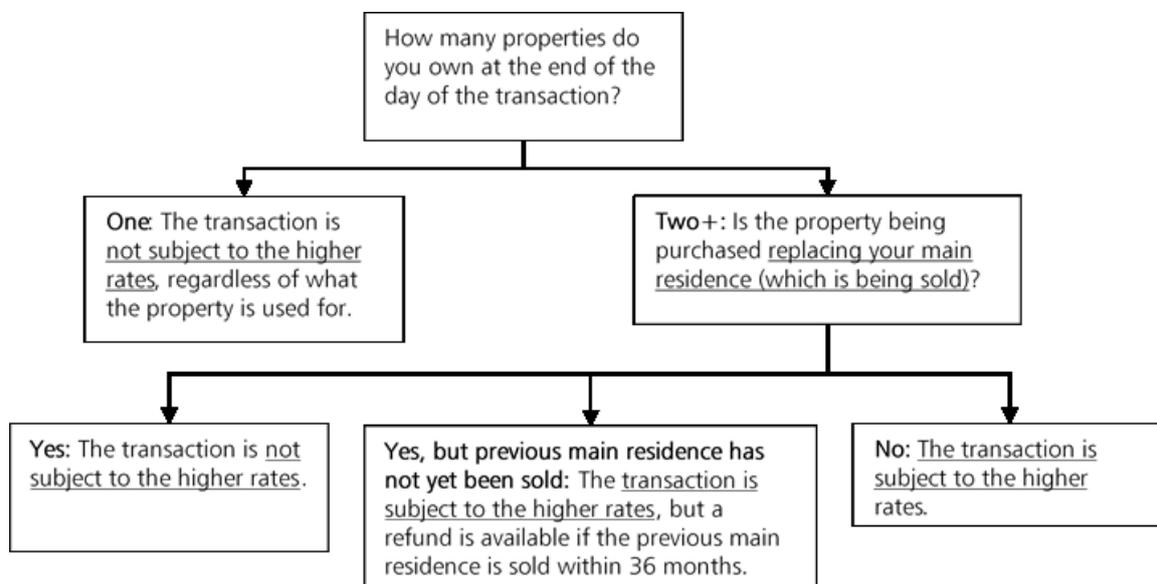
- at the end of the day of the transaction the purchaser owns only one residential property, irrespective of the intended use of that property.
- the transaction is for a new main residence and the purchaser has disposed of their previous main residence within a recent period (the consultation originally suggested 18 months, but this time period is discussed below).

1.4 The higher rates **will apply** if:

- at the end of the day of the transaction the purchaser owns two or more residential properties and has not replaced their previous main residence.

1.5 A refund from the higher rates can be claimed if a previous main residence is sold within a given period (the consultation originally suggested 18 months, but this is discussed below).

Figure 1. How to check whether a particular transaction is liable for the higher rates



Married couples and joint purchasers

1.6 In the consultation document, the government proposed that married couples and civil partners purchasing property would be treated as one unit for the purpose of the higher rates.

1.7 This is because the government considers that in most circumstances a married couple will have a single main residence which they share. Any property owned by either partner is relevant when determining if an additional property is being purchased or not. Therefore, an individual buying a property could be liable for the higher rates if his or her spouse or civil partner already owns a residential property.

- In the example provided in the consultation document, Mr and Mrs M are married. Mr M owns a home (which he purchased on his own before he was married) where the couple live as their main residence. Mrs M then buys a property to be rented out. At the end of the day of the transaction they own more than one residential property and are not replacing their main residence, so the higher rates will apply.

1.8 Joint purchasers are treated in the same way as married couples. In the consultation the government proposed that if, at the end of the day of a transaction, any of the joint purchasers has two or more properties and is not replacing a main residence, the higher rates will apply to the entire consideration for the transaction. This provides consistency with the treatment of married couples. This means that, where two or more people purchase a property jointly and the property was an additional property for some of the purchasers but not for others, the higher rates would apply to the transaction.

Question 1: Are there any difficult circumstances involving family breakdown which mean that treating married couples and civil partners as one unit until they are separated is not appropriate? If there are, how would you suggest those circumstances are treated?

Question 2: Do you agree that, where property is purchased jointly, if any of the purchasers in a transaction are purchasing an additional residential property and not replacing a main residence, the higher rates should apply to the whole transaction value? If not, how would you suggest the government treats joint purchasers?

1.9 In general, respondents to question 1 suggested a number of difficult circumstances which may mean that the higher rates would apply in some challenging situations. A number of respondents pointed out that divorce proceedings can take longer than 18 months to complete, and where this happens, the higher rates may apply to an individual moving out of the former marital home when purchasing a new main residence. Some noted that for the purposes of Capital Gains Tax (CGT), married couples and civil partners are treated as living apart if they are separated in such circumstances that the separation is likely to be permanent, and that this treatment should apply to the higher rates of SDLT.

1.10 Some respondents felt that the proposals treated married couples differently to unmarried couples, in situations where unmarried couples owned properties in separate names. The issue of tax independence was also mentioned, with respondents arguing that treating married couples as one unit was contrary to other areas of the tax system which treat them as individuals.

1.11 Some respondents who answered question 2 felt that an apportionment system, where the higher rates would apply to only a portion of the SDLT due on property purchase if that property was an additional property for only one of the purchasers, would be fairer.

Government response

1.12 The treatment of married couples and civil partners, as proposed in the consultation, aligns with other areas of the tax system and provides simplicity. Married couples will not be treated differently to unmarried couples who jointly own or purchase property. In most cases a married

couple will live in a single main residence and therefore any further property purchased by either spouse should be treated as an additional property.

1.13 As such, the government will treat married couples as one unit for the purposes of the higher rates. The government supports marriage in the tax system in a number of ways, for example, through the Married Couple's Allowance and provisions within Inheritance Tax.

1.14 The government recognises that treating as one unit couples who have separated in circumstances which are likely to be permanent may cause difficulties. The government recognises that separation does not always result in a formal separation granted by deed or by the courts and **will, therefore, not treat married couples as one unit if they are separated in circumstances that are likely to be permanent.** This is in line with treatment for CGT.

1.15 In the case of joint purchases, a move to an apportionment system, would introduce complexity to the tax system, and would increase the risk of non-compliance. The approach that the government is taking is simple. The joint purchase of a property that is an additional property transaction for one or more of the joint purchasers is considered to be the purchase of an additional property and thus the higher rates will apply. Therefore, the government confirms that in the case of joint purchasers, all purchasers must fulfil all conditions of the main residence test on the purchase of a property.

Main residence test

1.16 The higher rates will not apply, in general, where purchasers own two or more properties at the end of the day of the transaction and are replacing their main residence. The government proposed a two-stage test in the consultation in order to determine whether a purchaser is replacing a main residence or not. The first is whether, at the time of the transaction, a property sold in the last 18 months was the only or main residence of the individual. The second is whether purchasers intend to occupy the new property as their only or main residence, as illustrated in the flow diagram in Figure 1.

Question 3: For the first stage of the test for determining whether a purchaser is replacing an only or main residence, does considering previously disposed of property in the way presented above cause practical difficulties or hardship in particular cases?

Question 4: For the second stage of the test, do you agree that the rule should require the purchaser to intend to use the newly purchased property as their only or main residence?

1.17 Around three-quarters of respondents who answered question 3 agreed with the government's approach to the main residence test, but a number of potentially difficult circumstances were raised. These included purchasers who were buying their first main residence but already owned a buy-to-let property, or circumstances where a purchaser in a chain of transactions experienced a breakdown of the chain and unexpectedly ended the day with two properties. In these circumstances the higher rates would apply to the transaction (although the purchaser may be eligible for a refund from the higher amounts, as discussed in the next section). A number of respondents felt that a preferable main residence test would be one which simply asks whether the purchaser intends to use the newly purchased property as a main residence (regardless of whether a former main residence was sold or merely moved out of and retained for other purposes).

1.18 The majority of the respondents who answered question 4 agreed with the government's use of an intention test when considering the newly purchased property, as they felt that properties that are to be used as main residences should be exempt from the higher rates.

Government response

1.19 The government believes that an alternative test, based solely on whether the purchaser intends to use the new property as a main residence, would significantly increase compliance risks, as it would create an incentive for landlords to move into a newly purchased property for a short period of time before renting it out. This is not in line with the policy intent and would provide a way for individuals to add to their portfolio of properties without being subject to the higher rates. Purchasers acquiring an additional property, such as those who buy a new home but decide to rent out rather than sell their previous main residence, will pay the higher rates.

1.20 Therefore, the government confirms that the main residence test as outlined in the original consultation is the right approach. It ensures that individuals replacing a main residence will not be subject to the higher rates where they are selling their previous main residence, even if they also own an additional residential property.

Periods of overlap or gap in main residence ownership

1.21 The government appreciates that there may be circumstances where individuals sell a property which was their main residence and then experience a delay before they purchase a new main residence, creating a gap in main residence ownership. As the individual is replacing a main residence, the higher rates should not apply to the purchase of the individual's new main residence, even if they retain an additional property that does not become a main residence (e.g. a buy-to let).

1.22 In the consultation document, the government proposed that there should be a maximum 18 month period between the sale of a previous main residence and purchase of a new main residence before the higher rates should apply, in the event that the purchaser retains an additional property in the interim. The 18 month period was intended to strike a balance that provides flexibility for legitimate circumstances without creating avoidance opportunities.

1.23 Similarly, the government is aware that in some circumstances individuals will purchase a new main residence before disposing of their previous main residence. In this case, the government is clear the higher rates will apply to the purchase of the new main residence, as at the end of the day of the transaction, the purchaser will own two or more properties and has not yet disposed of their previous main residence.

1.24 Recognising that the individual may, at a later date, dispose of their former main residence, the government proposed a refund mechanism from the higher amounts in these circumstances. The consultation proposed that a refund from the higher amounts would be available for individuals who dispose of their previous main residence within 18 months of the day of the transaction for a new main residence.

Question 5: Do you agree that 18 months is a reasonable length of time to allow purchasers a period between sale of a previous main residence and purchase of a new main residence that allows someone to claim they are replacing their only or main residence and therefore not pay the higher rates of SDLT?

Question 6: Do you agree there should be a refund mechanism in place for those who sell their previous main residence up to 18 months after the purchase of a new main residence? Are there any other cases where a refund of the additional SDLT paid should be given?

Question 7: Can you suggest any other actions the government could take to mitigate the cash flow impact on those who only temporarily own two residential properties?

Question 8: Are there any other situations regarding main residences which require further consideration?

1.25 Of those respondents who answered question 5, some agreed that 18 months would, in most circumstances, be a reasonable length of time between the sale of a previous main residence and the purchase of a new one for purchasers to claim that they are replacing a main residence. However, respondents noted that this may cause some difficult cases, such as an employee moving abroad for work for a period of time. Others noted that where individuals disposed of a previous main residence before the Spending Review and Autumn Statement 2015 announcement, they may have less than 18 months from the date of the announcement to purchase a new main residence.

1.26 Most respondents to question 6 agreed that there should be a refund mechanism in place for those who bought their new main residence shortly before selling their old one. However, many felt that there would be circumstances in which 18 months would be an insufficient length of time to sell a previous main property. Examples of these include people needing to leave their home due to ill health, properties affected by flooding, and people in negative equity. Suggestions ranged from 12 months to an unlimited time period, reflecting the diverse circumstances people can find themselves in. Some respondents felt that the option to defer payment of the higher rates, rather than pay upfront and claim a refund, would ease any cash flow issues.

1.27 Some respondents also suggested there may be circumstances where a person purchasing a main residence unexpectedly inherits a small share in a property shortly before their purchase is due to complete. In this instance, the purchaser would need to dispose of their share in the inherited property prior to the transaction completing in order to avoid the higher rates and this would be difficult for those inheriting minority shares.

Government response

1.28 The government considers that the most appropriate way to mitigate the effects of the wide range of difficult circumstances that respondents raised, such as those concerning divorce, disability and illness, is to increase the period of time that people have to dispose of their old property, in order to claim a refund from the higher rates. **The government has decided to increase to 36 months the period of time purchasers are able to claim a refund following the sale of a previous main residence.**

1.29 The government has decided that this should also apply to those who have sold a previous main residence, retained another property and are purchasing a new main residence. **The time**

period purchasers are able to do this without being subject to the higher rates on their new main residence will increase to 36 months following the sale of a previous main residence.

1.30 Furthermore, the government agrees that individuals who disposed of their previous main residence before the date of the Spending Review and Autumn Statement 2015 should have longer to replace their main residence without being charged the higher rates. The government has therefore decided that **the 36 month period will begin from the date of the Spending Review and Autumn Statement 2015, 25 November 2015 or from the date of sale of the main residence, whichever is later.**

1.31 The government agrees that individuals who inherit a small share in a property whilst in the middle of a purchase of a main residence should not be captured by the higher rates. **The government has therefore decided that when applying the higher rates, a small share (50% or less) in a single property which has been inherited within the 36 months prior to the transaction, will not be considered as an additional property.**

Submission of the SDLT return

1.32 The government appreciates that for individuals who own two or more properties temporarily for a very short period, for example if they experience a breakdown in a property chain, paying the higher rates of SDLT and then claiming a refund of the higher amounts very shortly after may be burdensome.

1.33 The consultation asked whether an option to allow the current rates of SDLT to be paid (rather than the higher rates) as long as the previous main residence has been sold by the time the SDLT return is filed would benefit individuals experiencing a short, temporary overlap of properties.

Question 9: Would there be a benefit to a significant number of purchasers if the test for whether someone owns one, or more than one, residential properties, were undertaken at the time of submitting the SDLT return, rather than at the end of the day of the transaction?

1.34 Some respondents who answered question 9 felt that in occasional instances there would be a benefit to purchasers if the test for whether someone owns additional residential properties were undertaken at the time of submitting an SDLT return. However, over half felt that it would not benefit a significant number of purchasers, and many pointed out that the SDLT return is often filled out and submitted well before the current 30 day time limit.

Government response

1.35 Given the general consensus that this change would not benefit a significant number of purchasers and the additional complication that this would bring, the government has decided to proceed with the test being carried out at the end of the day of the transaction rather than at the time of submitting the SDLT return. The current system of the SDLT return is simple and clear to purchasers and conveyancers.

Property owned outside of England, Northern Ireland and Wales

1.36 SDLT only applies to purchases of land and property in England, Wales and Northern Ireland. A purchase of residential property located outside these areas will not pay SDLT, but may be subject to any property transactions tax in that jurisdiction. However, the consultation

proposed that property owned globally will be relevant in determining whether a property purchased in England, Wales or Northern Ireland is an additional property. This means that if an individual is purchasing their first property in England, Wales or Northern Ireland, they may pay the higher rates if they own property outside these areas.

Question 10: Do you agree with the government's proposed approach to considering property owned anywhere in the world when determining whether the higher rates of SDLT will be due?

1.37 Many respondents to question 10 agreed with the government's proposed approach to considering property owned anywhere in the world when determining whether the higher rates of SDLT will be due. They agreed that it would not be fair for an individual with multiple properties around the world to avoid the higher rates on a UK property purchase. However, some respondents noted that it would be difficult to assess whether a purchaser owned property outside of England, Wales and Northern Ireland due to differences in land law in those jurisdictions.

Government response

1.38 The government confirms that property owned anywhere in the world will be considered when determining whether the higher rates will be due.

Furnished holiday lets

1.39 In the consultation, the government proposed that properties purchased for use as furnished holiday lets should be treated in the same way as all other residential properties. If the property is purchased as an additional property the higher rates will apply.

Question 11: Do you agree with the proposed treatment of furnished holiday lets?

1.40 Most respondents to question 11 agreed with the proposed treatment of furnished holiday lets on the basis that the proposed treatment matched the wider rationale for the higher rates. However, a number of tourism bodies and self-catering associations raised their concerns that furnished holiday lets contribute to the tourism industry and wider economy, and are in some cases treated differently elsewhere in the tax system (such as for income tax purposes). Many of those respondents requested an exemption from the higher rates for properties used as furnished holiday lets.

Government response

1.41 The government recognises the importance of the self-catering holiday accommodation sector for the UK's economy. In designing the higher rates the government has had to strike a careful balance between supporting the self-catering sector and supporting owner occupation of property; many furnished holiday let properties are suitable for use as residential properties. Therefore, the government has decided to treat furnished holiday lets in the same way as other residential properties.

Other cases

1.42 The government recognises that it may not have taken into account all of the possible cases where an exemption or a re-examining of the issue may be appropriate and in the consultation asked respondents for any other cases that the government should consider.

Question 12: Are there any other cases which the government should consider?

1.43 The cases that came up most frequently in answer to this question were the treatment of property renovators and restricted-use properties. Respondents felt that restricted-use properties such as holiday lodges which cannot be occupied all year round, should be excluded from the higher rates on the basis that they were unlikely to be purchased by a first time buyer or owner-occupier. Many respondents expressed their concerns that the new rates may reduce the profit margins of property renovators who have a role to play in improving the quality of the housing stock.

Government response

1.44 Having considered the consultation responses received, and weighing up the potential compliance and other issues associated with restricted use properties such as holiday lodges, the government has decided to treat restricted property purchases in the same way as additional property purchases.

1.45 Having considered the consultation responses received, there is no compelling case for treating property renovators differently. Property renovators often target properties that may be desirable for owner-occupiers and they also benefit from the Capital Gains Tax (CGT) system by offsetting any SDLT costs against their CGT charge on sale. The government can confirm that purchases by property renovators will be treated in the same way as purchases made by others. That is, where a renovator purchases an additional property, the higher rates will apply.

The proposed exemption for large scale investors

1.46 The higher rates of SDLT form part of the government's overall housing strategy including support for home ownership. The higher rates of SDLT are therefore intended to apply to the vast majority of circumstances where individuals or companies and other non-natural persons purchase additional properties, which can impact on other people's ability to get on the housing ladder.

1.47 However the government is aware that some purchases of additional properties may positively contribute to an overall increase in housing supply and support the government's wider housing strategy, helping to facilitate the development and quality of the housing stock across tenure types. Given the potential positive impacts some significant developments can have, the consultation suggested that an exemption from the higher rates of SDLT targeted at some forms of investment in property may be justified.

Question 13: Do you agree that an exemption should be available to individual investors as well as all non-natural persons? Alternatively, is there evidence to suggest any exemption should be limited to only certain types of purchaser? If so, which types of purchaser?

Question 14: Do you think that either the bulk purchase of at least 15 residential properties or a portfolio test where a purchaser must own at least 15 residential properties are appropriate criteria for the exemption? Which would be better targeted?

Question 15: Are there better alternative or additional tests that could be used to better target an exemption and fulfil the government's wider housing objectives?

Question 16: Are there any other issues or factors the government should take into account in designing an exemption from the higher rates?

Question 17: Do any specific kinds of collective investment vehicle or other non-individuals need to be treated differently to companies?

1.48 A large number of individual respondents to these questions expressed their views that there should not be an exemption at all, arguing that it would unfairly benefit larger investors over smaller ones.

1.49 However, organisations and groups responding to the consultation generally agreed that there should be an exemption, arguing that the increased SDLT costs would reduce the profitability of those investing in residential property. They stated that the Private Rental Sector is an important part of the economy and off-plan purchases are important in financing new investment in property.

1.50 Over two-thirds of respondents who answered question 13 agreed that if there was to be an exemption that it should be available to individual investors as well as all non-natural persons. Respondents pointed out that it is fair for an exemption to be available for all who can meet the conditions and that individual investors are as capable of making significant investments in housing as corporates.

1.51 Most of the larger organisations who replied to the consultation supported a portfolio test, with an emphasis on a group-level test, as they felt this would ensure professional landlords are encouraged.

1.52 Respondents to questions 15, 16 and 17 suggested many alternative tests to better target an exemption and many issues and factors that the government should take into account, as well as examples of collective investment companies. These included exempting property renovators, chain fixers and property traders.

Government response

1.53 The government has considered this issue further. Many of the consultation responses strongly objected to the idea that the higher rates should be paid by most individuals purchasing additional properties, but those who had already built up an existing portfolio should be exempt.

1.54 On balance, following an assessment of the evidence provided in response to the consultation, the government's view is that the evidence suggesting that in the absence of an exemption there would be an adverse and material effect on housing supply is not compelling. Whilst the higher rates may have some effect on off-plan purchases, the government's view is

that the overall effect on housing supply is not material and housing developments will remain attractive for corporate investors as well as potential home owners.

1.55 The government has had regard to the significant support it is offering to the housing market more generally, for example through government-led schemes which are designed to support an increase in housing supply. The Private Rented Sector guarantee scheme offers significant support for investors in the rental market. The government also notes the existing flexibilities within the SDLT system available to significant investors in the property market.

1.56 In light of this, **the government has decided to apply the higher rates equally and is not offering an exemption for significant investors.**

Trusts

1.57 Property is sometimes held by trustees in trusts. In the existing SDLT system, bare trusts are already “looked through” to the beneficial owner of the land. With bare trusts the beneficiaries have the same entitlements as if they owned the assets directly. The government proposed to continue with this treatment, looking at the beneficial owner in carrying out the test of whether the higher rates apply.

1.58 For other trusts, the government proposed that they would always be liable to the higher rates, except in some limited circumstances where there was a beneficiary with a life interest or interest in possession. In these cases it was proposed that the treatment of the trust should be the same as if the beneficiary had purchased the property. This means that trust purchases are not subject to higher rates only where the trustee is purchasing the property for an individual beneficiary who owns no other properties or where the trustee is replacing the main residence of the beneficiary.

1.59 The government also proposed that beneficiaries with a life interest or interest in possession should be treated as owning the properties held in trust they are entitled to occupy or from which they are entitled to the income.

1.60 The consultation included the following example:

- A is the trustee of a new settlement for the benefit of B during B’s lifetime. After B dies, the trust property will pass to C. A purchases a property. B is an individual who owns no existing property. B is entitled to occupy the purchased property under the terms of the settlement. This will be B’s only property at the end of the day of the transaction, so A will not pay the higher rates of SDLT. This is the case regardless of whether C owns a property. After this, B purchases a property in his or her own right. At the end of the day of the transaction, B has interest in two properties (as B’s interest in possession in respect of the property owned by the trust counts), so B will pay the higher rates of SDLT.

Question 18: Do you agree with the proposed treatment of trusts, including the higher rates of SDLT applying to trusts purchasing residential property except where a purchase is a first property or replacement of a main residence for a beneficiary?

1.61 Of the respondents who answered question 18, two-thirds agreed that the treatment of purchases made by trustees of bare trusts should continue to be treated as if they were made by

the beneficial owner. Some respondents expressed their view that trustees should not be treated as owning additional properties when they purchase their own homes.

Government response

1.62 The government confirms the proposed treatment for properties held in trust and purchased by trustees. Bare trusts will be “looked through” for the purposes of the tests for the higher rates. Purchases and ownership by trustees of trusts with life beneficiaries or income beneficiaries will be tested based on the circumstances of those beneficiaries. All other purchases of additional properties by trusts will be liable at the higher rates.

HMRC: administration and compliance

1.63 The government recognises that the higher rates of SDLT will create additional administrative obligations for agents acting for purchasers. The government expects most of the additional information that needs to be obtained from purchasers will be straightforward and uncontroversial. One piece of information which will be required from purchasers is whether, at the end of the day of the transaction, the purchaser will have two or more properties, and whether any newly purchased residential property will be a main residence and replacing a previous main residence.

1.64 This would be required in a situation where a purchaser with multiple properties at the end of the day of a transaction would not pay the higher rates. In order to determine whether a newly purchased property is replacing a main residence, agents will need to determine whether the purchaser has disposed of any residential property within 36 months of the new transaction and whether or not that disposal was a disposal of the purchaser’s only or main residence.

1.65 The government intends to provide conveyancers with written guidance and online calculators. In addition, the government asked what more was needed in order to ensure purchasers understand what rates of tax they will be paying on a planned purchase. The government was particularly interested in views as to whether a specific set of questions designed by HMRC for conveyancers to use with their clients would aid compliance.

Question 19: Do you think that purchasers are more likely to give accurate answers to main residence questions if HMRC provides specific questions for the conveyancer to ask the purchaser?

Question 20: Would a formal declaration by the purchaser that the answers to any such questions are accurate help to increase compliance without creating undue burdens for conveyancers? How do you think such a declaration should work?

Question 21: Besides normal publicly available guidance, are there any additional products that HMRC can provide to help purchasers understand what rates of tax they will be paying on a planned purchase?

1.66 The majority of respondents to this set of questions felt that the purchaser should be responsible for providing accurate information on the SDLT return, as they are now. Some respondents were concerned that specific questions provided by HMRC could increase the burden on the conveyancer, who may be expected to ensure that the information provided was accurate. Some solicitors and conveyancers who responded pointed out that purchasers already have to sign a declaration on the SDLT return stating that the information provided was accurate, so an additional formal declaration by the purchaser is unnecessary. Respondents also

had many ideas regarding the products that HMRC could provide to help purchasers understand what rates of tax they will be paying.

Government response

1.67 The government does not wish to alter the current onus on the purchaser to ensure that the contents of the SDLT return are correct, and will therefore not provide specific questions for conveyancers to ask purchasers or require a separate formal declaration other than the declaration through the existing return. HMRC has produced guidance on the new legislation and has committed to working with solicitors, conveyancers and their representatives to produce further guidance and assist their work. HMRC will continue to monitor the use of guidance and the emergence of common queries and will keep guidance up to date.

A List of respondent organisations

174 Law/North Point
A W Tax Ltd
Absolutely Brilliant Properties
Acorn Blue
Aldermore Bank
Apex Bridging
Armstrong Watson
Ashurst
Association of Residential Letting Agents
Association of Mortgage Intermediaries
Association of Real Estate Funds
ATT
Bateman Homes Ltd
BDO LLP
Beckford House B and B
Bedrock Business Finance
Berkley Associates
Beswick Relocation Services
Birketts
Birmingham Law Society
Blue Arch Property Ltd
Bold Legal Group
Boodle Hatfield
Bourne's Estate Agents
Bowden Housing Co-operative
Bradford Area Co Housing
Brecher Solicitors
Bricklane

Bridgemere UK
British Land
British Pearl Ltd
British Property Federation
Bromley Council
Building Societies Association
Cannock Mill CoHousing
Carant Properties Ltd
CARE
Caron Cooper
Cartus
Charles Russel Speechlys LLP
Chartered Institute of Legal Executives
Cherwell District Council
Chorlton Co Housing
Chartered Institute of Taxation
Clarke Howes
Clarke Willmott LLP
Clifford Gould
Co Housing Bristol
Co Housing Durham
Co Housing Woodside
Compass Financial Planning & Employee Benefits
Cornerstone Housing Co-Operative
Cornwall Community Flood Forum
Cornwall Council
Cotsmoor Ltd
Council of Mortgage Lenders
Country Land and Business Association
Countrywide plc
D&G Asset Management
Davidson Deem

DCLG
Deloitte
Devon and Somerset Law Society
Department for Social Development- Northern Ireland
Dudley Developments
DWF LLP
Empty Homes Network
English Association of Self Catering Operators
EY
Eversheds
Federation of Private Residents Association
Fireside Housing Co-Operative
Five Rivers Co Housing
Forsters
Friendly Housing Action
FTI consulting
Gabelle
GMS Estates Ltd and Traland LLP
Grainger plc
Grant Thornton LLP
Graven Hill Development
GVMC Properties Ltd
Habitat First
Helco Development
Home Builders Federation
Home Owners Alliance
HomeAway
Homewise Ltd
Hopes and Dreams Renovations
House Buyer Bureau
Howard Cadman
Institute of Chartered Accountants in England and Wales

Independent Network of Estate Agents
Inspired Asset Management
Institute of Chartered Accountants of Scotland
Institute of Financial Accountants
Intergenerational Foundation
Intermediary Mortgage Lenders Association
Invesres
Investment Property Forum
J Marsh Services Ltd
JMP Yorkshire Ltd
John Bray and Partners
John Charcol
Jumby Investments Ltd
Kedgling Developments Ltd
Kingston Smith
Knight Frank
KPMG
Landmark Restoration
LaSalle
Laytons Solicitors
Leconfield
Leeds Community Homes Ltd
Leek Co Housing Ltd
Lilac Co-operative
Locality
Lodha
London Central Portfolio
Longmill Development Ltd
LTG Real Estate and Construction – For and on behalf of BDO LLP
M&G Real Estate
Manchester Urban Co Housing Ltd
Marston Properties

McCarthy and Stone
MHA MacIntyre Hudson
National Association of Property Buyers
National Custom and Self Build Association
National Farmers Union
National Flood Forum
National Housing Federation
National Landlords Association
Nationwide
Nationwide Property Developments
Nether Edge Law
North West Landlords' Association
Northern Ireland Tax Committee of Chartered Accountants Ireland
Oak Retirement Ltd
Owl House
Oxford Co Housing
Paragon
Parkwood PX Ltd
Perry Parrott Ltd
Personnel Service Ltd
PJT Developments Ltd
Places for People
Premier Property Lawyers
Property Moose
Property Partner
PwC
Quick Move Properties
Quintain Estates and Development
Rawlinson and Hunter
Redrow Homes
RentPlus
Residential Landlords Association

Resolution
Resolution Foundation
Resort Development Organisation
Rob Skelton
Rooks Rider Solicitors LLP
Royal Institute of Chartered Surveyors
Santander UK
sbpdc Ltd
SDLT.co.uk
Secure Sale
SecureASale
Sequel Developments
Seven Summits Financial Ltd
Simplify Property
Stamp Taxes Practitioners Group
STEP
Sterling Properties Ltd
Tax Link Accountants
Telford Homes Plc
The Association of Corporate Trustees
The Conveyancing Association
The Independent Network of Estate Agents
The Law Society
The Midland Association of Mountaineers
The Online National Residential Estate Agency Limited
The Society of Licensed Conveyancers
The Wales Association of Self-Catering Operators
TheAdvisory.co.uk
Toller Beattie
Tommac Properties Limited
Tourism Alliance
Trowers & Hamblins LLP

UK Crowdfunding Association (UKFCA)

Unite Students

Vintage Green Cohousing

Virgin Money

We Buy Any Home

Weil

Welham Architects

West London Investment Properties

Westminster City Council

Whitehorse Estates Ltd

Worldwide ERC

Wrigleys Solicitors

Wyndham Vacation Rentals UK

YorSpace

B Meeting attendees

Association of Real Estate Funds
Association of Tax Technicians
Bricklane
British Property Federation
Burgess Salmon
Central London Portfolio
Chartered Institute of Taxation
Clarke Willmott
Clifford Chance
Deloitte
EY
Forsters
FTI consulting
Grant Thornton
Grovesnor
Home Builders Federation
Hoseasons Holidays
Inspired Asset Mangement
Institute of Chartered Accountants England & Wales
KPMG
Laytons
Paragon Mortgages
Platinum Property Partners
Property Partner
Residential Landlords Association
Royal Institute of Chartered Surveyors
Stamp Taxes Practioners Group
Taylor Wessing
Tourism Alliance
Welsh Government

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