Consultation Response

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

29th January 2016

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The Home Builders Federation (HBF)

The HBF is the principal trade association for private sector home builders in England and Wales and our members produce around 80% of the new homes built each year.

Introduction

We welcome the opportunity to respond on behalf of the house building industry to the specifics of this consultation, and more generally, on the creation of a new higher rate of SDLT on purchases of additional residences as initially announced by the Chancellor of the Exchequer at the Autumn Statement in November 2015.

Our response covers a broad overview of our position on the proposed reform as well as more detailed responses to the 21 questions specifically posed in the consultation document. For the most part these responses relate to the likely impact on the new build market, from the perspective of (i) sales, (ii) land assembly during site acquisition stage and (iii) overall housing supply.

David O'Leary, Policy Director

Home Builders Federation
HBF House, 27 Broadwall, London SE1 9PL
Tel: 0207 960 1600
Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

Summary and main points

- We support the Government's ambition to promote home ownership and to boost house building. The pro-development policies of recent years, such as the introduction in 2013 of the Help to Buy Equity Loan scheme, are now translating into impressive results in terms of housing supply, with more than 170,000 net additions to the housing stock in 2014/15, an increase of 30% on the year before.
- However, the country needs at least 220,000 new homes per year on a sustained basis. Achieving that level of supply will require a broad range of housing suppliers and sustainable demand from various types of buyers.
- Our response is predicated on the belief that Government does not wish to reduce the delivery of new homes as a result of these policy changes, so that any damage to delivery would be entirely unintended.
- Investor buyers play an important role in the new build market, de-risking capital-intensive developments with upfront funding. This support for housing delivery comes from investors of all kinds, both large-scale and smaller-scale.
- The economic realities of some developments mean that in these instances, e.g. on high-rise schemes, developers are only able to finance the delivery of homes with significant forward financing that only realistically comes from investors who are frequently able – and willing – to purchase off-plan more than six months before completion. By contrast, buyers purchasing with a mortgage will be restricted by the terms of their mortgage offer, usually six months. However, by securing the development through forward financing, investors are supporting delivery of homes at a later date for first-time buyers and other owner-occupiers by ensuring the development goes ahead.
- Without an exemption for residential developers, the impact of the additional SDLT levy on the new build sector, and the wider housing market – especially in the context of other recent changes to tax treatment of investors – could be significant.
- We would propose an exemption from the higher rate of SDLT for purchases of additional residential properties where investors are purchasing a new build property and therefore allowing that development to proceed.
- We consider the 15-unit threshold for either bulk purchases or based on a buyer's portfolio to be entirely arbitrary and consider a 10-unit threshold to be as justifiable, whilst also helping to secure more investment and allowing investors buying new homes on smaller sites, often delivered by small house builders, to fall within the scope of 'large-scale investors'.
- Developers frequently purchase second-hand dwellings, either as part of assembling land to bring forward a residential scheme, or to substantively redevelop the area. In such cases we would be extremely concerned that house builders would

be liable for the 3% surcharge. Even taking account for the option to pay SDLT under the non-residential rates will still exist this still has the potential to significantly increase the costs of site acquisition and development.

- The fairest and most effective solution would, therefore, be to introduce a purpose test which would provide an exemption for residential developers buying properties in the course of assembling land for development. Targeted reliefs similar to this are already available in relation to ATED and Part Exchange.

Overview

We acknowledge and support the Government's ambition to promote home ownership opportunities and reverse the long-term decline in the owner occupation tenure, particularly amongst younger households. The introduction of the Help to Buy Equity Loan scheme in 2013 has transformed the prospects of tens of thousands of families who may otherwise not have been able to purchase a home. Whilst promoting home ownership, the Help to Buy scheme has also engendered confidence amongst house builders who, as a result of this boost to *effective* demand, have been able to invest in the land and labour required to expand the supply of housing, the results of which are borne out by the 30% year-on-year increase in net housing supply recorded in 2014-15, taking the annual figure for England to more than 170,000.

The role of investor buyers in supporting housing delivery

Estimates of housing need in England vary but it is widely acknowledged that the country requires at least 220,000 new homes per year going forward. Achieving that volume of house building delivery will necessitate involvement from a wide range of providers, a diversity of private developers and the attraction and ability of various types of purchasers to complete transactions. Investor buyers represent one important strand of this tapestry. Whilst new homes make up a relatively small part of the overall number of housing market transactions each year, the role of investors in the new build sector is of considerable importance due to the financial realities of development. Sustained demand is critical to the industry as it continues to rebuild capacity following the crash of 2007/8 which ultimately led to a fall of more than 40% in annual additions to the supply of housing. In many areas, including in London, there is significant demand for private rented accommodation, much of which cannot be financed without investment from a broad base of investors.

For a plethora of reasons such investors are attracted to new build. These include the option of purchasing multiple, purpose-built properties at one time, in one location, via one vendor and the low maintenance costs involved.

Individual investors are considered by developers to be as important in supporting the supply of housing as are corporate or large-scale investors. In terms of financing developments, there are often practical and rational reasons for preferring to spread exposure risk across multiple purchasers rather than exposing a significant proportion of the scheme to a single investor.

The economics of some developments, especially in high-density areas such as Central London, mean that for house building companies, the forward funding that can be provided by investors can secure the viability of a development to ensure that homes are actually delivered. High-rise developments, in particular, carry significant upfront risks and are extremely capital intensive. The effects of this can be minimised or mitigated by early off-plan sales that are difficult to finance for owner-occupiers who are usually subject to standard six-month mortgage offers. The Government's intention to introduce an exemption for large-scale investors indicates an acknowledgement of the role played by these buyers in the wider residential development process and, more tangentially, the housing market in general.

It is not possible to estimate accurately the impact that the changes being consulted on will have on this segment of the market, and even less predictable is the effect on residential development, which would likely be greatest in Central London. Modelling the likely impact would be exceptionally difficult in the context of other recent changes made to the tax regime for landlords and corporate investors, such as the removal of finance cost relief, restrictions on relief for mortgage interest and the Annual Tax on Enveloped Dwellings (ATED), some of which are yet to be fully implemented. The impact of a significant reduction in demand amongst investor buyers would inevitably threaten the viability of some sites.

To mitigate this, we would propose **an exemption from the new higher rate of SDLT when purchasing a new build property.**

Failing that, a fairer, more flexible definition of what constitutes a 'large-scale investor' should be considered. The 15-unit threshold proposed by the Government appears to be somewhat arbitrary. A 10-unit threshold would deliver the same policy objectives, whilst reducing the impact on development at the margins. We also consider that a flexible qualification for large-scale investors should be used so that purchasers with a qualifying number of properties within their existing portfolio, *and* those making a bulk purchase of properties, should not be subject to the higher rate.

We understand Government's desire to restrict demand from this part of the market, but would urge that once this policy change has been concluded and implemented, time is allowed to review the impact of all of the reforms in recent years, as well as the forthcoming tax changes before any further efforts are made to limit the buy-to-let market which actually supports housing growth. There must be a real risk that the cumulative impact of all the changes could have a more serious impact on demand than intended.

As such, HBF would favour a broad definition of 'large scale investor'. We address these points in more detail in response to Questions 12-16.

Complexity

SDLT is currently a relatively efficient and understandable tax, with few perversities since the abolition of the slab system in 2015. The new higher rate of SDLT on purchases of additional residential properties would seem to reverse these gains by reintroducing considerable complexity into the system and increasing administration costs for HMRC.

Impact on house builders assembling land for development

In assembling land for development, it is not uncommon for house builders to purchase one or several pre-existing homes in order to improve the development potential of the whole site, creating a larger site capable of supporting the delivery of homes to contribute to an overall increase in the housing stock.

Under the proposed regime, even where Multiple Dwellings Relief (MDR) is eligible, the new costings represent an increase in pre-development land assembly costs. We do not believe that it is the Government's intention to levy additional costs on house builders attempting to put together sites for residential development.

Depending on the ultimate criteria that the Government settles on for its definition of a 'large-scale investor', some larger developers may qualify for this status if and when they have an existing portfolio of 15 or more existing residential properties. However, most large companies will probably not qualify, and certainly smaller house builders, who have declined in numbers by around 80% since the late 1980s, would remain severely disadvantaged. HBF strongly supports the raft of Government measures aimed at creating a business environment that allows SME developers to flourish, but we are concerned that raising site acquisition costs for small companies could inadvertently undermine these efforts.

We believe that constructing a new exemption for house building companies purchasing residential properties in order to enable residential development should be part of the final policy design for the new higher rate of SDLT on purchases of additional residential properties. An exemption would avoid damaging development viability and house builder's cash flow. Examples of existing reliefs for property development companies include those in relation to Stamp Duty (Part Exchange Relief) and ATED, so precedent exists in the interests of achieving valuable outcomes, i.e. boosting housing supply.

Responses to specific consultation questions

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?

We have no specific comments to make in response to this question.

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?

We have no specific comments to make in response to this question.

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?

Other than a general increase in the complexity of the SDLT regime because of the practical difficulties around such definitions, we would also argue that in addition to replacing a main residence, buyers should be exempt from the higher rate if they are acquiring their first main residence, i.e. where they have previously had a small stake in another property, perhaps through inheritance.

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?

We have no specific comments on this.

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?

Whilst in strong market conditions 18 months seems reasonable, the policy should reflect the realities of all market conditions so there is a strong case for a longer period in which the purchaser is able to sell their previous main residence. One option would be to allow for extensions to this period in some limited circumstances. For instance, where a sale of the previous main residence is substantially performed within 18 months, but only legally completed shortly after the conclusion of the 18 month period.

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?

Whilst we welcome the Government's acknowledgement that certain buyers may not be able to dispose of their previous main residence immediately, the creation of a refund mechanism inevitably necessitates the construction of greater bureaucracy to administer refunds. In accordance with our answer in response to Question 5 above, in certain circumstances there ought to be provision for a limited extension to this deadline where a transaction is briefly delayed.

The opportunity cost of tying up the money ought to be considered. This is important both for individuals and couples, but also, if there is no exemption as proposed above, for house building companies purchasing dwellings as part of the land assembly process. For smaller firms in particular, cash flow can be extremely important to ongoing business success.

We would encourage the exploration of a process whereby the additional SDLT would be payable at the end of the period in which the purchaser is allowed to sell their previous main residence. This also potentially negates the need for such a volume of bureaucracy. The impact of levying the 3% surcharge immediately could present difficulties for chained sales where the purchase of a property is contingent on the sale of another. Should the sale not be completed, the purchaser, not wishing to put at risk his or her deposit may be required to secure bridging finance or borrow money to cover the surcharge. In some cases this may push the purchaser into a higher Loan-to-Value banding or substantively affect the mortgage offer. Clearly, this could create dislocation in the market, ultimately disadvantaging first-time buyers elsewhere in those chains.

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?

As outlined in response to Question 6, we believe that levying the additional tax at the conclusion of the 18 month period would be fairer and involve less bureaucracy.

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

As recommended above, consideration should be given to the treatment of house building companies which may purchase residential properties as part of the land assembly process for residential development.

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?

Extending the date of the test to the point at which the SDLT return is made would likely help a small number of purchasers without delaying the test excessively.

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?

There are questions of practicality and potential cost for HMRC in relation to considering property assets owned elsewhere in the world.

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

We have no specific comments to make in response to this question.

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

We would reiterate the need to carefully examine the treatment of house building companies purchasing residential property to assemble land for a residential development site. This is expanded on in more detail in response to Question 15.

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?

Yes, we believe that individuals investing should be treated equally. It would seem inequitable to treat two buyers making the same purchase, and in the same circumstances, in different ways. We would urge the Government to consider the importance of investors, both individuals and non-natural persons, to the deliverability of new residential development. The upfront finance that investors of all types play can secure the financial viability of complex or marginal schemes, and unequal treatment of individual investors would merely serve to incentivise the creation of non-natural persons status. A comprehensive exemption from higher rate SDLT for new build would support the objective of increasing housing delivery.

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?

We believe that either criteria should qualify the purchaser for an exemption. That is, purchasers buying a qualifying number of properties *and* those with ownership of a minimum number of properties should be exempt.

A portfolio-based test for exemption qualification could be a barrier to entry for new investors. It should be remembered that while the Government seeks to support large-scale investors, many of those we would consider to be such may have started as smaller scale investors. Similarly, basing the qualification on bulk purchases fails to recognise the significance that an upfront purchase of 5 properties, for instance, can have on the development economics of a particular scheme. There is also a danger that SMEs, who typically develop smaller sites, would be disadvantaged as investors would incur higher transaction costs when purchasing a proportion of a development of fewer than 15 homes.

We are unconvinced that the number in either case should be 15 properties and would welcome justification of this threshold which seems rather arbitrary. An equally valid threshold would be 10 properties, the threshold used elsewhere in Government policy as a proxy for small sites.

Given the importance of investors in forward funding some developments, and the relatively small part of the wider residential sales market that involves new build housing, we believe that there is a case for exempting the purchase of a new build or converted dwelling from the higher rate of SDLT whoever the buyer.

We would also welcome clarity on how SDLT would be apportioned in cases where a purchase of several properties takes a buyer above the qualifying portfolio threshold. For instance, an individual or corporate with 12 properties who is purchasing five additional dwellings.

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?

As described above, we believe that in order to limit negative impact on housing supply, that buyers purchasing new build or newly converted housing should be exempt from the higher rate.

We also believe that it is critical that house builders themselves are exempt from the higher rate SDLT when purchasing properties to assemble land for residential development or redevelop an area.

Increasing pre-development costs in this way would not only inherently threaten development viability and lead to fewer homes being built, it would also risk severely disadvantaging smaller builders who will often consider buying second-hand dwellings for redevelopment of the land.. It is for this reason that we propose a robust SDLT exemption for house building companies purchasing residential properties for the purpose of assembling a residential development site and delivering much-needed new housing.

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

Please see our comments in response to Question 15 above.

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

We have no specific comments to make in response to this question.

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?

We have no specific comments to make in response to this question.

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?

We have no specific comments to make in response to this question.

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Email: info@hbf.co.uk Website: www.hbf.co.uk Twitter: @HomeBuildersFed

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?

We have no specific comments to make in response to this question.

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?

The introduction of the new higher rate of SDLT on purchases of additional residential properties considerably increases the complexity of the SDLT regime. We would therefore welcome all efforts by HMRC and Government more generally to provide prospective purchasers (and home sellers such as house builders) with robust and concise information presented in such a way, and via channels, that is accessible and comprehensible. A simple online walkthrough would be very useful for house builder sales teams to direct prospective purchasers to.

David O'Leary
Policy Director
david.oleary@hbf.co.uk