



ICAEW REPRESENTATION 94/16

TAX REPRESENTATION

Finance Bill (No 2) 2016 Clause 117: SDLT: higher rates for additional dwellings etc

ICAEW welcomes the opportunity to comment on the Finance Bill published on 22 March 2016.

This briefing of 28 June 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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WHAT THE CLAUSE IS INTENDED TO DO

1. Clause 117 introduces schedule 4ZA to Finance Act 2003.
2. The schedule increases the rate of stamp duty land tax (SDLT) by 3% for “higher rate transactions” which are defined as those where:
 - The chargeable consideration is £40,000 or more
 - The purchased dwelling is not subject to a short or reversionary lease
 - The purchaser has a major interest in another dwelling with a market value in excess of £40,000
 - The purchased dwelling is not a replacement for the purchaser’s main residence.
3. In simple terms the higher rate applies when a second property is purchased such as a buy to let or a holiday home.

General comments

7. We commented on the consultation in [ICAEWrep 26/16](#). We are pleased to note the amendment such that in situations where a main residence is purchased but for some reason the main residence being replaced has not been sold that a period of 36 months will be allowed to reclaim the higher rate SDLT.
8. We are disappointed that the additional SDLT is payable up front and has to be reclaimed. This additional SDLT will be payable at a time that the purchaser may already be struggling to pay a bridging loan because the sale of their home fell through.
9. We are still concerned that the policy objective of assisting first time buyers will not be achieved where the lenders require the parents to be included as a party to the mortgage and consequently a part owner as this will attract the higher rate of SDLT on the full cost.
10. We are pleased that the definition of a married couple/civil partnership has been changed to match the definition in the Income Tax Act 2007 such that if the couple are separated where the separation is likely to be permanent they are treated as two units for the purpose of purchasing residential property.
11. We consider it unfair that a married couple/civil partnership can only have one residential property, they are treated as one unit, but a couple living together without being married or in a civil partnership can have two residential properties. This is discriminatory and the [response to the consultation document](#) saying “the government supports marriage in the tax system in a number of ways, for example, through the Married Couple’s Allowance” which only applies where one of the couple was born before 6 April 1935 is not comparable.

RECOMMENDATIONS

12. Where a replacement main residence is being purchased but the original one has not been sold the additional rate of SDLT should be paid at the expiration of the 36 months allowed to sell the original one rather than paid up front and reclaimed. Provisional claims for relief are allowed in other parts of tax law, such as a provisional claim for capital gains tax business asset rollover relief.
13. Where there is more than one purchaser the additional SDLT should only be payable on the proportion purchased by the buyers who already own a residential property. This would allow parents to be party to the mortgage of a residence they are assisting their child to buy without the child having to pay the additional rate. Wealthy parents who are able to pay cash to buy a part of the property for their child can avoid the additional rate by lending the child the cash and then having tranches of £40,000 value of the property transferred to them in tranches.

14. To avoid discrimination against married couples, if they are to be treated as one unit they should be allowed two residential properties.
15. Consideration should be given to introducing a relocation relief. Individuals who relocate for work or business purposes and who purchase a property in their destination location may not wish to sell their existing home, especially if the relocation is intended to be temporary or if the individual is uncertain about their long-term intentions. Individuals may also need to retain their existing home for family reasons. There is a precedent in the capital gains tax legislation where an individual can continue to claim main residence relief on one property whilst occupying an alternative property due to work commitments.
16. Properties owned outside the UK should be ignored when considering how many properties are owned. Owning a property abroad does not detract from the policy objective of providing help for first time buyers and the additional rate of SDLT may deter inward investment to the UK. Potentially this could be included within a relocation relief.
17. Consideration should be given to an exemption for properties bought for redevelopment (akin to the exemption from the 15% rate). The lack of an exemption seems contrary to the policies to promote the provision of extra houses. If there is a concern about abuse, there could be a three year time limit as for a replacement main residence where the original has not been sold at the time the replacement is purchased.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).