



Conveyancing Association response to consultation on Higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties

The below response is submitted on behalf of the Conveyancing Association. The response was drafted following a period of consultation with the Conveyancing Association's members. The consultation and response were also discussed and agreed upon at a meeting of the Conveyancing Association's Management Committee.

About the Conveyancing Association

The Conveyancing Association is the voice of the specialist UK Conveyancer and the leading trade body for the conveyancing industry. Our Membership is made up of the top 100 Solicitors and Licensed Conveyancers, who collectively conduct approximately 20% of all property transactions and 70% of all remortgage transactions in England and Wales.

The Association is a not for profit organisation that works collectively and proactively to improve the conveyancing process and to formulate and implement best practice throughout the industry. We work collaboratively with industry stakeholders to campaign, influence and improve the conveyancing process.

Responses

Question 1: The difficulty here is that many couples separate and go their separate ways before they formally divorce – the point of grounds D (2 years separation with consent) and E (five years separation) of the divorce legislation is to encourage no fault divorce and reduce acrimony between the parties. If they can't then buy another property without a punitive rate of tax being charged because they are not formally divorced that desirable outcome is effectively discouraged.

Question 2: This could have the unintended consequence of extra stamp duty becoming payable if a parent is jointly purchasing a home for their children and is necessarily on the title deeds. The criteria should be that the additional rates do not apply if it is a residential home for any of the joint buyers. The fact that a co-owner may own another property should not affect the position if that co-owner has no beneficial interest in the property. Consideration needs to be given to the position of trustees who may be the legal owner of a property but have no beneficial interest in it. It would be inequitable for higher rates of duty to be payable in such a situation. We are also concerned about the treatment of Transfers of Equity between Registered Owners. For example - A & B own a buy to let property on which the additional 3% SDLT has been paid. A buys out B. Is the 3% additional SDLT payable on the consideration if A has another property?

Question 3 & Question 4: Here we are faced with the Revenue needing to consider the facts of the case through an evidential process. This process could turn what is in effect a relatively straightforward process of submitting an SDLT Tax Return into an investigation – with what grounds for appeal? The question for determination should be based upon the purchaser of the property being able to certify that they comply with certain specific and easily understood requirements and laid out by the government. This could be done by way of a simple form requiring a purchaser to answer yes or no to a set of questions. Again the conveyancer should be able to rely on the information provided by the purchaser and complete the SDLT return accordingly.

Question 5: On the face this is not an unreasonable time for the majority of transactions but there will inevitably be timescales outside this and therefore injustice caused.

Question 6: Our preference would be for a declaration that the buyers are intending to sell their main residence to be sufficient for the extra tax not to be levied in the first instance. The refund procedure should be simple and straight forward and be one which the buyers themselves can deal with rather than the conveyancer having to keep their file open for 18 months.

Question 7: Our response to Q6 deals with this.

Question 8: If the Government is only prepared to think in terms of a few days the only practical answer would be in the situation where contracts have been exchanged but completion dates were different. We need to be mindful of conveyancers' obligations to lenders in ensuring that registration takes place within the priority period.

Question 9: Completion is the most certain date for this .

Question 10: If the Government is going to take into account property owned outside England and Wales and Northern Ireland then conveyancers must be able to proceed on the basis of a declaration of non-ownership by the buyer.

Question 11: We see no reason why furnished holiday lets should be treated differently.

Question 12: No comment.

Question 13, 14, 15, 16: We should not for the sake of our economy be looking to discourage investors who help the rental market. Setting an arbitrary number of transactions is exactly that – arbitrary in its nature with no reasoning. If this particular criteria is to be set then we suggest a lower figure of 10- but again this is arbitrary with no scientific basis.

Question 17: There seems no reason to do so.

Question 18: Again we see iniquitous cases will arise through circumstances. There should be some sort of appeal process which goes to an independent body rather than those purely interested in increasing the Treasury revenue. The rules must be clear and easily comprehensible to ensure certainty.

Question 19: We agree that HMRC should provide specific questions but these should be on a form for the purchasers to sign. It should not be the responsibility of the conveyancer to cross examine their clients.

Question 20: Yes the declaration should be set out at the bottom of the list of questions which the purchaser is required to answer.

Question 21: No comment.