

PART 2: ANNEXES TO THE EXPLANATORY NOTES

Annex 1

A summary of replies received on the consultative document, “Modernising Stamp Duty on land and buildings in the UK.”

INTRODUCTION

1. This annex summarises the responses to the recent consultative document containing proposals to modernise the stamp duty regime. Before doing so, there is a description of the consultation process so far. A contact point for further feedback is provided at the end of this annex.

THE CONSULTATION PROCESS

2. In line with its commitment to consultation, the Government published a Consultative Document in April 2002 titled, “Modernising Stamp Duty on land and buildings in the UK.” It outlined proposals for a modernised stamp duty regime.
3. In all, there were nearly 100 written responses to the consultative document. The Government would like to reiterate its thanks to all of the individuals, businesses and representative bodies that responded. These responses have been (and continue to be) very helpful in understanding all the issues that concern those involved in UK land and property.
4. Responses were received by sector as shown in table one, below:

Sector	%
Occupiers	22
Solicitors	19
Property	10
Agriculture	9
Financial	9
Accountants	8
Public	6
Chartered Surveyors	5
Business	4
Estate Agents	1
Construction	1
Pressure Group and other sectors	6

Table One: Responses to consultative document by sector

5. Responses were received as follows, by organisation:

- 41% were from representative bodies,
 - 27% were from businesses,
 - 25% were from professional advisors,
 - 7% were from other groups, including individuals.
6. The response period for this document closed on the 19th July 2002, however the Government continues to consult interested parties through an extensive consultative committee structure.
 7. Further details of the consultation programme, including the committee structure, and minutes of the committee meetings can be found on the Inland Revenue website at <http://www.inlandrevenue.gov.uk/so/modern.htm>

SUMMARY OF RESPONSES

8. What follows is a brief summary of the responses that we have received, grouped together to reflect the chapters of the original consultative document. The summary is intended to represent the comments made to us by those who responded to the consultative document. It is neither a reflection of the views of the government or the Inland Revenue nor an endorsement of the respondent's views. Each section begins with a recap of what was originally said in each of the relevant chapters.

CHAPTER TWO – SCOPE

Background details of chapter two:

9. Chapter two proposed that a key feature of the revised charge would be that it was limited to transactions involving land in the UK.
10. Other types of assets, such as goodwill and receivables, would be removed from the scope of stamp duty. This would facilitate the sale and purchase of businesses, and by removing a charge which affects certain financing transactions such as debt factoring and securitisation of debts, should assist UK businesses in obtaining cheaper finance.
11. The charge would extend to transfers of substantial interests in entities (such as companies) owning mainly UK land, in order to prevent the avoidance of stamp duty through the use of “special purpose vehicles” (SPV).
12. The charge would also clarify that the liability would usually fall on the purchaser or lessee.

Responses received:

13. The responses related to:
14. *specific exclusions* – brownfield site regeneration has been suggested as a category of land where a specific exclusion is appropriate.

15. *money or money's worth* – most responses suggested that the possible extension of chargeable consideration to include services would have a negative impact on developments and it would also be difficult to quantify.
16. *exchanges* – the proposal to treat exchanges as if there were two separate transactions taking place was criticised. The following reliefs on exchanges were suggested where properties are exchanged:
 - to vary the balance of properties in a portfolio,
 - to regularise a boundary between sites,
 - to consolidate holdings,
 - by way of part-exchange by house builders, or
 - where there are exchanges of property for ‘shares’ in a joint venture of which the property forms part.
17. It has also been suggested that reliefs for pooling interests on development sites will also be required together with a relief for the surrender and regrant of leases. Respondee explained that these could, in their opinion, arise for genuine commercial reasons without there being a real transaction of value between unconnected parties.
18. *short term leases* – most responses said that short term leases should be excluded from the charge. It has been suggested that the exclusion should apply to leases with terms of less than five or seven years.
19. *new rules for SPVs* – a large number of responses expressed concern at these new proposals. In particular that genuine commercial arrangements might be affected by the proposed changes. For example, a transfer of existing unit trusts into a funds structure (to aid liquidity and choice).
20. *VAT* – Whilst not discussed in the condoc, a large number of responses have commented that stamp duty should not be levied on VAT as it is perceived to be a tax on a tax.

CHAPTER THREE – PROCESS

Background details of chapter three:

21. Chapter three explained that the Government’s intention was to revise the way in which stamp duty on UK land and buildings is administered.
22. The revised procedure would require completion of a standard notification by the purchaser or lessee, who would also be liable for payment.
23. The notification and charge would fall due when payment is made, or other value passes, in satisfaction of a contract or other agreement to transfer an interest in land. But there would be rules to ensure payment of a deposit on exchange of contracts for house purchase does not result in stamp duty being due before completion.

24. It would no longer be necessary to submit all the documents currently required with notification and payment. But it could be necessary to provide those documents where the transaction was selected for review by the Inland Revenue. That would only happen for a very small number of purchases by owner-occupiers.
25. The framework would be suitable for a transaction-based tax, backed up by appropriate enforcement rules covering record keeping, enquiries, interest, penalties and appeals.
26. The requirement to account for stamp duty prior to registration of property title would remain.

Responses received:

27. The responses related to:
28. *crystallising the charge* – most responses commented that the payment of a deposit in residential conveyances should not crystallise the charge.
29. *pre-transaction rulings* – it was suggested that these were essential given that self-assessment is to be a part of the modernisation of stamp duty.
30. *enquiry process* – most respondents commented that the proposed time period of 3 years within which the Inland Revenue would make enquiries following notification of commercial transactions was too long.
31. *transaction based reporting* – some responses stated that the option of quarterly reporting would be useful although some responses stated the opposite. Other respondents indicated a preference for the option of reporting transactions as they are completed.
32. *payment by instalments/contingent payments* – charging each time value is passed was highlighted by many of the respondents as being their preferred option.

CHAPTER FOUR - RATE STRUCTURES

Background details of chapter four:

33. Chapter four explained that the Government’s intention was to keep the existing rates structure for stamp duty, known as a “slab system”, which applies a single rate to the whole of the purchase price.
34. The Government also announced that it intended to review the duty on the grant of new leases so that, in time:
 - the charge corresponds more closely to a stamp duty charge on a transfer of property of a similar value,
 - it better reflects modern commercial practices, and

- stamp duty on the sale or conveyance of property is not avoided merely by the creation and transfer of a lease.

Responses received:

35. A high proportion of written responses to the consultation document commented on the lease duty proposals, and about a sixth of all written responses were exclusively concerned with lease duty.
36. Their responses covered the following:
37. *taxing premiums* – the principle of taxing premiums on leases on the same basis as a transfer of freehold property was accepted by most respondents (i.e. using the slab system rates).
38. *the slab system* – the shortcomings of the slab system itself has been questioned, especially the distortions around the thresholds.
39. *the formulaic approach* - those that responded on this point strongly criticised the example of the formulaic approach provided in the consultative document as, for them, it produced substantial increases in the stamp duty payable.
40. *rack rented leases* – the view that rack rent leases are liabilities rather than assets was emphasised.
41. *leases being used as an avoidance technique* – many respondents stated that leases were not used as a mechanism to avoid stamp duty and that there was no real evidence of this being the case. The example of sale and leaseback agreements was given as a legitimate business arrangement in a number of responses.

CHAPTER FIVE - RELIEFS AND OTHER PROVISIONS

Background details of chapter five:

42. The Government proposed in chapter five that the existing reliefs (such as on transfers to charities) would be carried into the new regime, except where doing so would undermine the intention for stamp duty to apply fairly. Reform would also provide an opportunity to consider representations for new reliefs.

Responses received:

43. The responses related to:
44. *existing reliefs* – the responses here suggested that, as a minimum, the existing reliefs (including group relief and relief for reconstructions and sub-sales) should be preserved.
45. *new reliefs* – those suggested include:
 - compulsory transaction purchase transactions;

- a relief for registered social landlords (RSLs) - leases granted by RSLs and acquisitions by and leases granted to RSLs,
 - relief for tenancies in the social rented sector,
 - gifts of property between family members,
 - transfers between spouses,
 - farm business tenancies granted for the longer term,
 - reliefs similar to those in the stamp duty reserve tax scheme for the merger of authorised unit trusts,
 - the conversion of authorised unit trusts into open ended companies (if there is to be a 4% charge on the transfer of substantial interests in a property unit trust),
 - extending the pension fund pooling rules to real property or to shares or units in property unit trust schemes,
 - the assembly of land for development,
 - coal mining leases, and
 - relief for purchase of freeholds by residential leaseholders.
46. ***anti-avoidance rules*** – it was suggested that the anti-avoidance rules introduced in sections 111, 112, and 113 Finance Act 2002 would not be needed if the SPV charge was introduced. Others include section 90 Finance Act 1965 (transfers in contemplation of sale), sections 119, 120, and 121 Finance Act 2000, and the existing provisions dealing with the surrenders of leases and agreements for surrenders of leases.

CHAPTER SIX - COMPLEX COMMERCIAL ARRANGEMENTS

Background details of chapter six:

47. In chapter six the Government recognised the importance of facilitating transactions for the development and financing of UK property, so far as that is possible without damaging the tax base. An important objective is therefore to design a modern regime which is sufficiently flexible to cater for complex commercial transactions and the use of new and innovative property owning structures, in place of the existing rules many of which have been in existence for over 300 years.
48. The Government wanted the fullest possible understanding of the effect of these proposals on businesses involved in the acquisition, occupation and ownership of UK land, and so businesses are encouraged to identify any foreseen difficulties at an early stage. The use of limited partnerships and joint ventures, large development projects involving several parties and the use of UK land as security for bond issues would all be considered carefully.

Responses received:

49. The responses related to:

50. *treatment for partnerships, limited liability partnerships (LLPs) etc* – respondents suggested that all partnerships, limited partnerships and LLPs should be treated as transparent for stamp duty purposes so that acquisitions and transfers of UK real estate by the partnership would be treated as an acquisition or transfer of an interest in the underlying real estate by the partners. In addition, they suggested that there should be special rules to enable payment of stamp duty to be dealt with by the partnership rather than the partners. It was also suggested that special rules are required for joint ventures.
51. *other complex commercial issues* – the following transactions were put forward for consideration by the respondents:
- securitisations;
 - sale and leaseback;
 - outsourcing transactions; and
 - PFI/PPP deals.

FURTHER CONSULTATION

52. Although the deadline for this consultation has passed, the Government continues to welcome contributions on the proposals for stamp duty. If you wish to send in ideas, they should be sent by post to

Luke Liddiard,
Inland Revenue,
Room 116, New Wing,
Somerset House,
London, WC2R 1LB.

Or by email to msd.stampscondoc@ir.gsi.gov.uk.

53. Whilst it may not always be possible to give a personal response to such correspondence the ideas expressed will be taken into consideration during the formulation of any policy changes.
54. In addition, your comments are welcomed on the draft legislation that has been published today alongside this annex. This can also be found on the Inland Revenue's website at www.inlandrevenue.gov.uk/so/modern

Code of practice on written consultation

CONSULTATION CRITERIA

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.
3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

The Inland Revenue confirms that, where possible, these consultation criteria have and will continue to be followed.