

Introduction

16.1 This is the Regulatory Impact Assessment that considers the costs and benefits of a number of deregulatory and simplification measures on stamp duty land tax.

16.2 The Stamp Duty Land Tax (SDLT) regime was introduced on 1 December 2003. Since then government has received various representations on areas of the legislation that some feel could be clarified, simplified or even repealed.

Purpose and Intended Effect

The Policy Objectives

16.3 Broadly the Government intends to simplify the stamp duty land tax regime without significant loss of revenue or opening up avoidance opportunities in two ways:

1. To clarify the definition of “chargeable consideration” with regards the to stamp duty land tax regime by excluding various definitions where the potential for confusion and over-complication currently exists. Examples include:
 - A gift or bequest where the recipient is required or agrees to pay any inheritance tax or capital gains tax arising on the gift.
 - The payment by a tenant of landlord’s reasonable costs on the grant, variation or termination of a lease.
 - A covenant by an agricultural tenant to transfer his entitlement to Single Farm Payment to the landlord on termination of the tenancy.
2. To tackle three specific areas of concern where the stamp duty land tax legislation has had unintended effects.
 - Leases – complications arise when leases expire but tenancy continues on an agreed basis; there is also a need to simplify the treatment of lease variations and bring the calculation of stamp duty land tax in line with normal business practice.
 - Partnerships – all transfers of property within partnerships are currently subject to the stamp duty land tax regime in order to discourage their formation as a route to stamp duty land tax avoidance. However this unfortunately also catches transactions within ‘genuine’ partnerships who were not intended to be penalised by the legislation.
 - Trusts – as with partnerships, all land transfers within trusts are potentially subject to stamp duty land tax. Again this creates some perceived inconsistencies within the system particularly around sub-funds of trusts.

Consultation

16.4 Through the stamp duty land tax Working Together Steering Group and its sub-groups Government continues to work with all the key stakeholders of stamp duty land

tax. Here stakeholders continually assess the performance of the stamp duty land tax regime, suggest ideas for improvements and evaluate changes that have already been made. Many of these proposed legislative changes are the result of dialogue and consultation with stamp duty land tax stakeholders both directly and through the Working Together Steering Group.

Options

1. Do Nothing

16.5 This would mean that uncertainty would continue with some aspects of the stamp duty land tax legislation. In addition, areas of concern that have been highlighted to Government would continue to be problematic for practitioners and customers. HM Revenue & Customs' customers and their legal advisers might reasonably feel that their more sensible representations were being ignored.

2. Introduce a Package of Legislative Changes

16.6 Government has decided to enact legislative changes to stamp duty land tax where it is prudent to do so. It has therefore put together a package of changes that can be implemented immediately which represent no significant cost to the public finances and do not open up avoidance opportunities. These measures fall into two categories:

- To clarify the definition of “chargeable consideration” through the introduction of a new set of regulations allowed for within the original stamp duty land tax legislation.
- To tackle three specific areas of concern using new provisions in Finance (2) Bill 2006.
 1. Leases – to tackle the complications that arise when leases expire but tenancy continues on an agreed basis, to simplify the treatment of lease variations and to bring the calculation of stamp duty land tax in line with normal business practice.
 2. Partnerships – Government intends to remove the stamp duty land tax on transfers of interests in a partnership, providing that the sole or main activity of the partnership is the carrying on of a trade (other than a property dealing trade) or a profession.
 3. Trusts – Government intends to remove the charge on transfers between sub-funds unless a beneficiary is a party to the transaction.

Risks of Legislative Change

Perceptions

16.7 The overall length of the legislation will increase with these measures. These changes could therefore be perceived in some quarters as adding to the regulatory burden rather than deregulating and simplifying the legislation. Communication with and early involvement of key stakeholders will be essential in securing their buy-in to these measures.

16.8 Some stakeholders will view these measures as not going far enough. There are other deregulatory proposals (in particular process deregulations) which are in discussion that are not possible to enact this year due to legislative and technical

restraints. Again stakeholders will have to be kept fully informed so that these measures can be put in the context of a rolling programme of deregulations.

Unintended Consequences

16.9 In removing or tampering with anti-avoidance measures within the current stamp duty land tax legislation there is the possibility of opening up new areas of potential avoidance or weakening such measures that are already in existence. Each change to the regime must therefore be interrogated fully to expose and deal with any avoidance issues in advance.

Benefits

16.10 HM Revenue and Customs intends to carry out more work on quantifying the benefits and to undertake a review of the figures in standard cost methodology terms.

Clarification of “Chargeable Consideration”

16.11 The removal of certain areas that currently technically fall under the definition of “chargeable consideration” will generally clarify this area of the stamp duty land tax legislation. This will make the treatment of property transfers more certain and help clear up many ambiguities. Practitioners and customers will be able to be much more confident of whether a particular transaction falls within the stamp duty land tax remit or not.

16.12 These changes will be made through the introduction of a new set of regulations allowed for within the original stamp duty land tax legislation.

Tackling Three Areas of Concern

16.13 The following legislative changes require primary legislation, and the intention is to legislate in Finance (2) Bill 2006.

Leases

16.14 There is uncertainty as to how the rules on ‘successive linked leases’ apply where an agreement for lease is followed by the grant of a lease. The measure will provide that the rules on ‘successive linked leases’ do not apply in these circumstances.

16.15 The rules on variations in rent will be simplified. The current charge on rent increases not provided for in the lease (paragraph 13 of schedule 17A of the Finance Act 2003) will be restricted to increases in the first five years of the lease. All rent increases after the end of year five, whether provided for in the lease or not, will be subject to the ‘abnormal increase’ rules in paragraphs 14 and 15 of schedule 17A. The formula for what is an ‘abnormal increase’ will also be simplified.

16.16 The treatment of rent reviews under the legislation governing agricultural tenancies, and of ‘interim rents’ under the legislation governing business tenancies, will be clarified.

16.17 The treatment of leases which are ‘backdated’ and expressed to commence immediately after the expiry of a former lease, will be simplified and clarified.

16.18 The rules for notifying assignments of leases will be clarified to make it clear that where a lease was originally granted for less than seven years its assignment need be notified only if there is stamp duty land tax to pay, or if there is a relief to be claimed.

Partnerships

16.19 At present there is a charge to stamp duty land tax where there is a transfer of an interest in a partnership, if the partnership property includes land. That charge will be removed for all partnerships whose main activity is the carrying on of a trade (other than a trade of dealing in or developing land) or a profession. This means that most partnerships will no longer even have to consider whether there are any stamp duty land tax implications due to changes to their partners. This will benefit up to 600,000 partnerships that own or lease land if and when they change their partners.

16.20 There are also two places in the stamp duty land tax legislation in partnerships where there is the possibility of a double charge (the charge on 'actual consideration' in paragraph 10 of schedule 15 of the Finance Act 2003 and the interaction between paragraphs 14, 17 and 17A of schedule 15). This potential double charge will be removed.

Trusts

16.21 It is common for one overarching settlement to have several sub-funds, perhaps for different classes of beneficiaries. The stamp duty land tax treatment of transfers of assets between such sub-funds is unclear. These measures will put it beyond doubt that there is no stamp duty land tax charge on such transfers.

Overall Benefits

16.22 The clarification of these areas of the legislation will provide certainty for customers, their property law advisers and government. We expect this to reduce the burden placed on solicitors and conveyancers in respect of these areas of the legislation, and therefore potentially reduce the cost burden placed on customers.

16.23 It will also increase the fairness of the stamp duty land tax system. Areas that were never intended to fall under the current stamp duty land tax regime will be removed and areas of confusion will be clarified. Increased clarity will contribute to a more equitable assessment of stamp duty land tax liabilities.

Costs

Government

16.24 None of these changes will require any amendments to the current array of forms associated with stamp duty land tax. No major process changes will be involved. No additional avoidance of stamp duty land tax is anticipated as a result of these measures.

16.25 HM Revenue & Customs anticipate that these measures will have a negligible overall effect on the amount of revenue the Exchequer receives in the form of stamp duty land tax each year.

Customers

16.26 There should be no additional costs to customers, businesses or their advisers as a result of these measures, and indeed there may be a cost saving, as for many transactions customers and their advisers will no longer have to consider the impact of stamp duty land tax. HM Revenue and Customs intends to carry out more work on quantifying the benefits and in due course will also undertake a review of the figures in standard cost methodology terms.

Sectors and Groups Affected

16.27 All solicitors, conveyancers and legal professionals (and clients thereof) dealing with land transactions affected by the legislative changes outlined will benefit from these changes.

Small Firms Impact Test

Property Law Practitioners

16.28 Property solicitors and conveyancers should find the stamp duty land tax process simpler in the areas addressed by these changes, less time will be needed for some currently unclear or overly complicated areas. As the majority, around 95%, of legal practitioners are small firms these measures will have a disproportionately positive impact on small businesses in the sector affected.

Customers

16.29 These measures will clarify to what situations stamp duty land tax is applicable and therefore make financial planning around property transactions easier for small businesses and individuals. In addition, if property law practitioners choose to pass on the benefits of these measures to their clients then the compliance burden, of affected transactions, will decrease for stamp duty land tax customers.

Competition Assessment

16.30 These changes will have little or no effect on competition within the markets to which they apply, namely the conveyancing and property law professions. The competition filter test has been applied. There are no additional costs to business associated with these changes and they do not affect any firms substantially more than any others. The property law sector is not dominated by a small number of practices and these changes will have little or no effect on the structure of the market.

Enforcement, Sanctions and Monitoring

16.31 Stamp duty land tax has been continually monitored since its introduction in December 2003. As well as feedback through the stamp duty land tax help-line, several surveys have been conducted on practitioners' experiences of the new tax. Close contacts have been maintained throughout with practitioners' representatives and the law societies. These channels of communication will continue beyond the implementation of these changes enabling government to evaluate their effectiveness almost immediately.

16.32 The work of the stamp duty land tax Working Together Steering Group and its sub-groups will continue and thus provide valuable feedback on these changes.

Implementation and Delivery Plan

16.33 The changes to the definitions of chargeable consideration will take effect on 12 April 2006. The measure contained within Finance (2) Bill 2006 will take effect when it receives royal assent.

Post-implementation Review

16.34 The final RIA for Modernising Stamp Duty, published in March 2004, announced a post-implementation review within three years. It was promised that the review would examine compliance costs for business and individuals, solicitors and conveyancers and would review the additional yield and effectiveness of the compliance measures brought in as part of the new stamp duty land tax regime.

16.35 The Government will now include these measures within the scope of that post-implementation review and examine the benefits brought about by these legislative changes.

Summary and Recommendations

16.36 The proposed changes will have a beneficial effect on those legal practitioners that deal with the areas affected by these measures and their clients. There will be no additional costs to customers or the Exchequer while the risks that exist are manageable by Government. HM Revenue & Customs therefore proposes that these legislative changes be implemented.

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REGULATORY IMPACT ASSESSMENT
Deregulation and Simplification on Stamp Duty Land Tax
Statement of Ministerial Approval

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

Ivan Lewis
Economic Secretary to the Treasury

Dated: 13 March 2006