

PARTIAL REGULATORY IMPACT ASSESSMENT (RIA)

MODERNISING STAMP DUTY

16 APRIL 2003

Introduction

1. This updated partial regulatory impact assessment (RIA) considers the costs and benefits of the modernisation of stamp duty. This version updates the previous version that accompanied the consultative document, [“Modernising Stamp Duty on land and buildings in the UK” \(April 2002\)](#).
2. This document makes an initial assessment of the impact of modernising stamp duty and is informed by consultations to date. Any changes to the assessment and underlying assumptions will be reflected in the final regulatory impact assessment.
3. Stamp duty modernisation has the potential to affect directly all individuals or businesses, and their agents, who undertake transactions in certain types of property (predominantly land and buildings). Individual house-buyers, however, should experience little immediate impact from the changes – and a beneficial impact over time as the proposals pave the way for faster conveyancing once electronic systems are introduced. The proposals for modernising stamp duty are wide-ranging, and will therefore necessarily imply a new body of legislation and supporting information. The Government believes however that this is in proportion to the need, outlined in paragraphs 4 and 5 below, and that the result should be a more transparent, consistent and clearly targeted tax.

Purpose and intended effect

4. Stamp duty is currently (in broad terms) a tax on documents that transfer property.

The objectives of modernising stamp duty are:

- **fairness:** the Government has been concerned about the increasing extent to which stamp duty is being avoided. The use of artificial arrangements to avoid stamp duty on commercial property transactions is unfair to the compliant majority, particularly small businesses acquiring premises and individuals purchasing their own homes,
- **e-business:** to create a regime that supports the Government’s e-business agenda, and in particular the introduction of electronic conveyancing, which will make the house-buying process simpler, quicker and more efficient, and
- **modernisation:** to create a legal framework for stamp duty in line with more modern taxes, providing a level playing field and creating a charge that is based more on the substance of transactions.

5. The intended effect of the revised regime is therefore an e-enabled, streamlined and clearer charge, which applies fairly to all relevant transactions.

Risks

6. The objectives set out in paragraph 4 must be achieved. Modernisation will address the risks that could arise to the stamp duty base and to customers if the tax does not keep up with the development of electronic systems for conveyancing, and if some property transfers are allowed to circumvent the charge.

7. There will inevitably be risks in bringing in a modernised regime. The intention is to bring in the changes as quickly as possible, subject to ensuring that customers are given sufficient time and opportunity to understand the new rules. The interaction between stamp offices and the land registry bodies will need to be carefully managed, particularly during the transition period between stamp duty modernisation and full electronic systems for conveyancing. The need to heed commercial practice, in order to avoid the risk of “tax traps” such as a charge arising at more than one stage of a complex transaction, is noted.

8. The Government is convinced, however, that the changes necessary to “e-enable” stamp duty, and to make the tax fairer by improving compliance, will be most effective in the context of a full review. Changes to the current regime, rather than a full modernisation, would risk increasing, not resolving, anomalies. The necessary changes will be partly procedural, but can only be achieved through fundamental reform of primary legislation.

Key elements

9. Some of the key elements of the revised regime are set out below:

- to limit the scope of the charge to transactions involving the acquisition of an estate, interest or right in or over UK land and buildings;
- the charge to be triggered by completion, or substantial performance of contracts (if earlier than completion);
- a standard notification and payment procedure, suitable for a transaction-based self-assessed tax, backed up with appropriate compliance powers, interest and penalties;
- a range of appeal rights in line with those available for other taxes.
- the purchaser or lessee to be responsible for notification and liable for payment;
- the continuation of the requirement for stamp duty to be accounted for prior to registration of title to property;
- a revised charging structure for new leases;
- a range of targeted exemptions and reliefs.

Benefits

10. The benefits that will arise from meeting the objectives in paragraph 4 are considerable.

Objective 1: A fairer regime

11. Stamp duty will, following its modernisation, be known as stamp duty land tax. Stamp duty land tax should ensure that all relevant transactions are charged and stamp duty is applied consistently. Under the current system, some larger commercial deals in particular incur significant professional fees in structuring deals in order to “side-step” the charge.

Greater consistency in turnaround times

12. Under our current system, customers can choose to submit their documents to any one of eight stamp offices. The result is that, despite a national target for dealing with documents (5 working days), customers can receive inconsistent levels of service. While around 96% of documents submitted are turned around within 5 days, some take longer – especially during very busy periods in the property market. The new stamp duty land tax process will help ensure that all customers receive the same level of service and there will be less risk of inconsistent treatment.

13. Customers will have to provide some details via a standard notification procedure, by completing a land transaction return. They will no longer have to submit full original documentation of transfers in the first instance. This will eliminate the problem of delayed return or loss of such documents. Currently, stamp offices receive around 600 contacts per month about delayed documents. Most are resolved quickly, but around 100 per annum are passed to the IR Stamp Taxes complaints manager. Removing the need for the submission of original documents will therefore reduce administrative time and cost, benefiting both stamp offices and customers. Where, under modernised stamp duty, an enquiry into a transaction requires the submission of documents, copies will be sufficient.

Improved turnaround times

14. Under the stamp duty land tax regime, the formal commitment to a 5-day turnaround will remain, but we anticipate that customers will normally be issued with a certificate within three working days, provided they have submitted all the required information and payment.

15. In addition, the new processes for capturing data with faster turnaround times will be better able to cope with peaks and troughs of work (driven by the seasonality of the property market).

Tracking returns

16. The new system will make it possible to track the progress of returns. This means that we will be able to tell customers quickly and easily what stage their return has reached.

Process now, check later

17. At present, documents selected for our limited compliance checks are not stamped until we are satisfied that the stamp duty paid is correct. The new streamlined “process now, check later” regime will process as many transactions as possible at the initial stages. A certificate will be issued provided the customer has submitted the required information and payment. This will ensure that customers do not have to wait for any compliance checks to be completed before they can present their documents to the land registries. If the amount paid differs from the self-assessment, or any information has been omitted, the system will automatically issue a letter to the customer asking that they either pay the shortfall or supply revised information.

Requirement to make a return

18. Although the scope of stamp duty land tax may potentially bring into charge some transactions that are not currently stampable, where the consideration paid is insufficient to generate a charge then in many cases a return will not be required. This is to focus reporting requirements on transactions giving rise to a charge, transactions concerning major interests in land (broadly, freeholds and leaseholds) and transactions where a relief is claimed.

Identification of possible overpayments

19. The “process now, check later” regime will also highlight cases where stamp duty land tax may have been overpaid. For example, if the postcode of a customer purchasing a residential property is in a disadvantaged area and the consideration is £150,000 or below (and therefore not liable to pay stamp duty land tax), the IT system will automatically issue a letter to the customer indicating they may have overpaid. It will ask them to confirm the data captured and to what address any repayment should be sent.

Objective 2: An e-enabled stamp duty

20. Conveyancing of property will be speeded up by the introduction of electronic systems, and stamp duty changes pave the way for this development of electronic conveyancing by modernising this element of the conveyancing process. Payment and notification of stamp duty land tax will be possible through the land registries’ systems in the longer term. Ultimately, this will mean that duplication is minimised and customers and their agents can process property transfers through a single system and single point of contact with Government.

21. In advance of those changes we are working up proposals for the electronic submission of stamp duty land tax returns over the Internet via the Government Gateway.

22. We anticipate that the proposed notification requirements and new IT systems will enable more effective collection of accurate and timely

information about the property market, for use by many Government departments and for release to the public and the property industry.

Objective 3: A more modern, transparent and focused tax

23. Stamp duty was last consolidated in legislation in 1891. This review has provided an opportunity to consolidate and to clarify the charge.

24. It is proposed that the scope of stamp duty land tax is limited to land and interests in land in the UK, rather than “property” in general. Businesses will therefore benefit from the exclusion of some other categories of property, such as receivables, which are currently chargeable. The abolition of stamp duty on receivables should facilitate debt financing and debt securitisation, assisting businesses to raise finance by these means.

25. These changes to scope will remove the wide definition of “property” in the current system. At present, this can lead to anomalies and confusion, for instance where there is a theoretical charge on some transactions but where relevant documents are habitually not presented for stamping. Changes to scope will therefore enable a focused charge that is clearly understood and effectively enforced. With a clearly defined scope, new compliance procedures should be able to operate effectively and create a level playing field for relevant transactions.

26. The existing fixed duty of £5 on certain documents not involving a sale, for instance declarations of trust, will be removed. This will be a saving for customers, though notification of these transactions may still be required.

A modern appeals process

27. At present a stamp duty payer can only appeal against an adjudication directly to the High Court. We intend to introduce a range of appeals that are more in line with a modern tax regime. These appeals will be to both the General and the Special Commissioners, with disputes about valuation being referred to appropriate valuation tribunals. These rights will be similar to those in place for the self-assessment regime such as the right to apply for an enquiry to be closed or to appeal against the amount of an IR determination.

Revenue (Exchequer) effects

28. The modernisation proposals *directly* affect only the way in which tax is paid on property transfers, not the form of the transfers themselves. Overall, the proposals are intended to be revenue raising through improved compliance and redefinition of the scope of the charge, and there will therefore be a tax cost to some customers.

29. The modernised regime will enforce stamp duty on deals that would previously have side-stepped the charge. This will have an impact on the margins of gain from such transactions, and we expect a behavioural impact in that some may no longer be found viable. We estimate that in the long run up to 5% of all commercial property deals could be affected in this way. In turn, slightly fewer transactions mean that the yield increase we anticipate is slightly less. The current estimate of the yield increase from modernisation

(including the measures enacted in Finance Act 2002, and strengthened this year) is £350 million in the first full year rising to £450 million in the following year.

Implementation costs

30. It is anticipated there will be some administrative costs both for customers and for the Revenue. These will largely be non-recurrent costs associated with adjusting to a modernised duty.

IR Stamp Taxes implementation costs

31. A new IT system will be required by stamp offices, for use prior to, and ultimately to interface with, the land registries' new electronic systems. The current estimated cost for this is £25.4 million. The system will replace the present manual processes automating the collection of transaction details and payment in a way which provides the data required to operate a "check later" compliance regime.

32. Costs of business development for the new processes, including new form design and related costs total £3.7million These include designing, printing and distributing the new land transaction return to conveyancers.

33. Stamp office staff will require training to familiarise them with the revised regime, and with changes to their roles. The current estimated costs are £75,000.

34. Costs will be incurred in publicising the changes and providing information and guidance. The current estimated costs for publicity are £62,500. It is also intended to launch joint publicity initiatives with the land registries in due course.

35. Training for solicitors and licensed conveyancers will be delivered in partnership with the three Law Societies and the Council for Licensed Conveyancers. The current estimated costs to the Inland Revenue of providing this training is £7,500.

Customer implementation costs

36. The introduction of the new regime will naturally mean imposing some initial start up costs on our customers. Initial compliance costs will arise through needing to spend time becoming familiar with the details of the new system and through making changes to filing systems. At the margins, some customers may wish to engage additional professional advice in order to help clarify the application of the charge.

37. Solicitors using case management systems to complete the current PD (Particulars Delivered) form will need to update their systems to reflect the format of the new notification form. It is difficult to estimate the impact of this as many firms upgrade their entire systems on a fairly regular basis.

38. Solicitors will face some costs associated with training to understand how the new regime works and how they will operate it. However we aim to reduce these one-off costs as much as possible by providing guidance and other

help. For example, as stated in paragraph 35 above, the Inland Revenue will be providing training in partnership with the three Law Societies and the Council for Licensed Conveyancers; this should mean that the cost of training will be minimised.

39. Procedures between solicitors and their clients may need to be amended. At the very least, clients will need to be warned that an enquiry may be made into their land transaction return. People may wish to decide in advance whether the client or solicitor will handle such enquiries, and the client may wish to ensure he has sufficient papers in his possession once the transaction is complete to handle an enquiry if he so wishes.

40. The use of electronic systems will not be compulsory so where customers who wish to move to electronic systems choose to do so it is assumed that the associated costs will be subsumed in the general move to electronic communication rather than a stamp duty land tax specific charge.

- ***Views from customers and legal advisers on the likely costs to them of understanding the new legislation and setting up systems for the revised regime are welcomed.***

Compliance costs

41. A number of areas of potential impact are identified below.

Residential customers

42. During 2001-02, stamp duty was collected on nearly 1.5 million residential transactions. It is not expected that a modernised duty, at current rates, will increase compliance costs for the average purchase of residential property, indeed the revised regime is being designed to minimise this possibility. In the medium to long term, the availability of electronic conveyancing and the ability for stamp duty to be paid electronically may reduce compliance costs.

43. The Inland Revenue does not currently have an estimate for the compliance costs of stamp duty on taxpayers, who currently complete a PD (Particulars Delivered) form. For an average residential property, the total cost of legal fees typically ranges from around £250 to £1,000, but only a very small proportion of this cost will represent time taken in form filling. For commercial property, this proportion is likely to be even smaller.

44. The PD is a one-page form asking 18 questions/sub-questions. By comparison, the land transaction return will be about 12 pages long. However, this comparison overstates the true extent of additional information required and the additional time taken to complete the form. Customers will only be required to complete the sections relevant to their transaction, which for most simple transactions will reduce the time spent on the form. Furthermore, the new form comprises precise questions as opposed to the more open style of question in the PD. This clarifies the Revenue's information requirement and may save time by removing the need to request further information at a later date as can happen under the current regime.

45. The bulk of the information within the land transaction return is already contained within legal documentation that is currently submitted for stamping under the existing regime. Where the new form does ask for genuinely new information, most of this should not represent a significant additional burden on solicitors and taxpayers because the information (for example, postcode, type of property, agent's e-mail address) will, in most cases, be readily available.

46. Overall, we expect there to be a small increase in compliance costs, although this will depend on the extent to which solicitors and others take up electronic conveyancing.

47. In cases where an enquiry is opened, there may be some costs involved in providing the required information to the Revenue. The initial stage of any such enquiry will, however, only involve provision of the documents currently required prior to stamping (ultimately replaced under the new rules with a land transaction return). Compliant residential customers should therefore not experience a significant burden in complying with enquiries - other than perhaps to ensure adequate records are obtained from solicitors.

48. The new legislation has been carefully worded to ensure, where a property is purchased in joint names, only a single return is needed.

49. The revised regime will involve a requirement to keep relevant documents for a minimum period of six years. This is in line with the guidance given by the Law Society that advises solicitors to retain documents for at least six years. The responses to the draft clauses have not indicated that this would be a problem so it is not envisaged however that this will increase costs for customers or their representatives.

50. Under stamp duty land tax the requirement to keep the documents will fall on the liable person or individual. In residential cases this will be the house purchaser(s). However in practice, where the purchaser uses an agent, the solicitor will often retain the documents. Our customer education programme will ensure that both individuals and solicitors are fully aware of their obligations.

- ***Views from customers and their representatives on any possible compliance costs that may accrue from modernising stamp duty on residential transactions are welcomed.***

Charities

51. Stamp duty reliefs on transfers or leases to charities are to continue under the revised regime, subject to some new safeguards. The cost of compliance is unlikely to increase significantly for mainstream charities that are proposing to use the land acquired for charitable purposes only.

Businesses

52. It is very difficult to estimate the costs of stamp duty modernisation to a "typical" business, particularly as the charge is only incurred on an occasional basis when property is acquired. It is not thought that significantly increased costs will attach to transfers on which stamp duty would have been paid under

the existing regime. Behavioural effects are likely to be as important as direct compliance costs. The following paragraphs identify some areas of potential impact.

53. There will be some costs involved in notifying stamp duty liability, in accordance with the proposed rules. We do not consider that the provision of the required information will be significantly more onerous than the current requirements, and as mentioned above customers may benefit from not having to submit their documents. Special rules will be included to assist those who purchase large portfolios of properties and wish to report the transaction as a whole rather than separately for each property.

54. A new regime will be required for partnerships holding UK land. The Government has announced an intention to consult on such a regime during the summer. In the meantime interests in partnerships will continue to be subject to stamp duty as now.

55. A special scheme to allow staged payment of stamp duty land tax will be available for deals where there is further consideration to be paid after a charge has been triggered, and the amount of that consideration is uncertain, or its payment is contingent. There are also special rules to provide certainty for annuities and other periodic payments for an indefinite period.

56. The April 2002 consultative document asked for responses to the idea that holders of large property portfolios might opt into a quarterly reporting scheme. There was little enthusiasm for such a scheme, and one has not been incorporated for implementation.

57. Costs may also arise in complying with Revenue enquiries. Or on notifying a clawback of charge when entitlement to certain reliefs is compromised. As on the residential side, the requirement to keep documents for six years or to produce them in the event of an enquiry should not be onerous. Commercial transactions are however more likely to be complex, and enquiries may be more protracted as a result.

- ***Views from businesses and their representatives on any possible compliance costs that may accrue from modernising stamp duty in this area are welcomed.***

58. As mentioned in paragraph 29 above, a behavioural impact is expected on deals where stamp duty land tax is newly enforced (where stamp duty would have been side-stepped under the existing regime), meaning that in the long run around 5% of all commercial property deals may not be found viable. Where the newly enforced charge ultimately falls will be dependent on the relative market power of suppliers and users of commercial property. The impact of stamp duty changes on prices and on the number of property transactions will be kept under review.

Changes to stamp duty on new leases

59. Changes are being proposed to the structure and level of stamp duty on the rental element of new leases to ensure a charge that broadly corresponds to a stamp duty charge on a freehold transfer of similar value. The proposals are subject to further consultation. Under the proposals, the charge will be on

the 'value' of the rents over the term of a lease, discounted to net present value. However where that value does not exceed £150,000, the rental element of commercial leases will not be subject to a charge. This threshold will take around 60% of commercial leases out of the charge. The corresponding threshold for residential leases will be £60,000, which will take over 90% of residential leases out of charge. This should represent savings to many leaseholders who currently have to have low value leases stamped.

60. Leases with values above the relevant threshold will be charged at 1% of that value. The value will be calculated by reference to a formula. We intend to provide guidance and an on-line calculation tool that will minimise any cost associated with using the proposed calculation method, and we have proposed rules to simplify the calculation of the charge on certain leases of uncertain length or value.

Reliefs under the modernised regime

61. The vast majority of reliefs available under stamp duty land tax. Some new reliefs will also be available. Guidance both on the reliefs themselves and on how to claim them will be available.

62. The introduction of a differential zero rate threshold for residential and non-residential property – both for lease duty and for the main charge - may result in some additional compliance for mixed-use property. The structure of the relief – whereby the higher threshold is available to any property comprising some element of non-residential use – is, however, designed to minimise such costs.

63. A general sub-sale relief will not be available under stamp duty land tax. However, over the summer, we will be consulting to see whether there is a case for targeted sub-sale reliefs where the abolition of the general relief might cause particular hardship. We will also consider whether there is a need for a more general relief for major developments. If it is accepted there is a case for such reliefs they will be introduced following completion of the consultation process. We will also be consulting on whether there is a case for some form of relief for securitisations and sale and leasebacks.

64. Registered Social Landlords ('RSLs') house homeless families under agreements with Housing Authorities. The Chancellor announced last week that the tenancy agreements between the family and the RSL will be exempt from stamp duty. This new measure will also be part of the stamp duty land tax regime.

Transitional arrangements

65. The charge under stamp duty land tax will generally only arise in respect of transactions where completion occurs after 1 December 2003 and, broadly, the contract was entered into/varied after Royal Assent of the Finance Act 2003.

66. There are to be special rules in respect of options.

67. The following transactions will always be within the existing stamp duty regime:

- transactions where contracts are entered into before 17 April 2003 and not subsequently varied even if completion is after 1 December 2003.
- all transactions completed before 1 December 2003, irrespective of when the contracts were entered into.

68. More detail on transitional arrangements will be made available in due course.

Impact on Small Business

69. Ministers have made a clear commitment to a fair tax system and this has been one of the main drivers behind the modernisation of stamp duty. Therefore we have aimed to ensure that the changes being made would not disproportionately affect small business. For this reason stamp duty land tax has been developed with small business in mind. As such we have made a number of changes that will be of particular benefit to small businesses. For example, the proposed increase in the 0% band to £150,000 for transactions involving non-residential property will result in a tax saving for a large number of small businesses. In 2001 there were approximately 10,000 transactions involving commercial buildings in the £60,000 to £150,000 range.

70. In addition, as explained in paragraph 59 above, the £150,000 threshold for commercial leases will take out of charge around 60% of all commercial leases representing a considerable saving for small businesses in terms of the tax that would otherwise be due. For example, under a £150,000 threshold, a 10 year lease with an annual rent of less than £18,000 would be exempt from rent duty, as would a lease of any length with annual rent of less than £5,250. There may be some small businesses taking out leases above the threshold that will see a rise in the amount of tax due.

71. Where a lease is taken out of the charge the businesses involved will also make administration savings through not having to notify the Inland Revenue of the transaction. Where that business employs legal help there may also be a reduction in professional fees.

72. We have consulted with a wide variety of businesses and representative bodies including small businesses and those representing small businesses (including the Small Business Service). We have used this information to better understand the needs of small businesses and the assistance they will require to understand the changes to stamp duty. We will endeavour to reduce the impact of the changes by offering guidance to our customers. This guidance is being designed with small businesses in mind.

73. Small business readers may also be interested to read that a RIA was published on 9 April 2003 for the extension of disadvantaged areas relief for stamp duty.

Competition assessment

74. We have undertaken a competition assessment and the competition filter indicated that stamp duty land tax should not have any significant adverse effects on the competitive processes in the commercial and residential property markets.

75. Current avoidance of stamp duty obviously varies between investors in property. At one extreme, if any investors in property depend on avoiding stamp duty in order to be profitable, it is possible that modernisation of stamp duty might induce such investors to seek opportunities elsewhere. Nevertheless, the effect on the overall number of firms should be limited.

76. As stated above, we estimate a reduction in property market transactions of around 5 per cent as a result of modernisation. This effect on liquidity may dampen the price discovery mechanism, which could lead to small knock-on effects on competition. But again, the effect is expected to be limited.

77. The new lease duty regime is designed to remove distortions inherent in the current system which affect the choice of lease length. This is consistent with the general Government objective of improving the workings of the leasing market and should have positive effects on competition.

Equality assessment

78. Throughout the development of the legislation to support modernising stamp duty we have tried to ensure that equality issues are addressed. For example we have attempted to make sure that the provisions apply equally between transactions under Scottish land law and transactions under the land law in England and Wales. We have stated from the outset that one of the objectives of modernising stamp duty was to shape a fair regime – we are confident that the modernised regime will meet this objective, applying fairly to all without any adverse equality issues.

79. One good example of this is the introduction, under stamp duty land tax, of a set of reliefs that will remove the higher stamp duty charges that currently occur when using certain types of financing arrangements for property purchases. These arrangements are alternatives to conventional mortgages but are used in the same way. The introduction of these reliefs will place the stamp duty land tax treatment of purchases financed using these alternative property financing arrangements on a level footing with purchases financed by conventional mortgage products. These exemptions will be of benefit to individuals taking out so called 'Islamic mortgages'. However, these reliefs are not being restricted to the Islamic community and as such we believe that many other individual consumers will benefit from increased choice in the mortgage market.

80. In addition, in accordance with the Welsh Language Act 1993, the Inland Revenue has adopted the principle that it will treat the English and Welsh language on a basis of equality in the conduct of its business with the public.

Consultation

81. The Inland Revenue established a consultative committee structure with delegates from the property sector, banking, the tax and legal professions and other Government departments.

82. Consultation covered the proposals for stamp duty modernisation, as set out in the consultative document *Modernising Stamp Duty on land and buildings in the UK*; the impact of the changes as outlined in this partial RIA (and the previous publication), proposals for customer education and publicity; and also the draft legislation published following the 2002 Pre Budget Report.

83. A summary of responses that were received following the consultation exercise in April 2002 was published in November 2002. This can be viewed on the internet at:

http://www.inlandrevenue.gov.uk/consult_new/responsedoc.pdf

84. Further consultation is planned for the summer. This will consider stamp duty on complex commercial transactions, including transfers of interests in partnerships that hold UK land, sub-sale relief, a possible relief for large commercial developments, reliefs for transactions such as securitisations and sale-and-leasebacks and the proposed new structure for lease duty.

85. A continuing dialogue is envisaged to ensure the smoothest possible implementation and to address any post-implementation issues that may arise.

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