STAMP DUTY LAND TAX BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Stamp Duty Land Tax Bill as brought from the House of Commons on 13th January 2015. They have been prepared by HM Revenue & Customs (HMRC) in order to assist the reader of the Bill and to help inform debate on it. These explanatory notes do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

Structure of these notes

3. These notes begin with a brief overview of Stamp Duty Land Tax legislation as it applies to determine the rate of tax which applies to a land transaction. This is followed by a summary of the proposed changes, an overview and outline of the structure of the Bill, its territorial extent and application and commentary on the Bill's clauses. The final part contains information about the Bill’s financial effects, compatibility with the European Convention on Human Rights and when the provisions in the Bill come into force.

BACKGROUND

Stamp Duty Land Tax Legislation

4. The legislation relating to Stamp Duty Land Tax is set out in Part 4 of Finance Act 2003 and came into force on 1st December 2003.

5. Stamp Duty Land Tax (SDLT) is a transaction tax which applies to acquisitions of an interest (usually a freehold or a leasehold interest) in land in the United Kingdom. The purchaser (that is, the person acquiring the interest) is liable to pay the tax.

6. SDLT is charged at a rate which corresponds with a percentage of the “chargeable consideration” for the transaction (which is usually the purchase price for the property). Where transactions are “linked” for SDLT purpose (that is, where they form part of a scheme, arrangement or series of transactions between the same vendor

and purchaser or persons connected with them) then the rate of tax is that which applies to the aggregate consideration for the transactions.

7. There are separate tables of rates for acquisitions of residential and non-residential property (which includes mixed residential and non-residential property).

Residential Property (from 22nd March 2012)		Non-residential property	
Purchase Price	Rate	Purchase price	Rate
£0-£125,000	0%	£0-£150,000	0%
£125,001-£250,000	1%	£150,001-£250,000	1%
£250,001-£500,000	3%	£250,001-£500,000	3%
£500,001-£1,000,000	4%	Over £500,000	4%
£1,000,001- £2,000,000	5%		
Over £2,000,000	7%		

8. An alternative 15% higher rate charge applies to certain acquisitions of dwellings for more than £500,000 by a company, a partnership including a company or a collective investment scheme.

9. A separate SDLT charge applies on the grant of a new lease, on the net present value (NPV) of the rent payable over the term of the lease. This is charged at 1% of the excess of NPV over £125,000 (residential property) or £150,000 (non-residential property).

Background to the changes

10. The Government announced at Autumn Statement 2014 proposals to change the basis of calculation for SDLT on residential property transactions where the effective date (usually the date of completion) is on or after 4th December 2014. Non-residential property transactions, the 15% higher rate charge and the charge on rent are not affected.

11. These changes eliminate the “cliff edge” increases in SDLT liability which occurred under the old rules as prices rose above a rate threshold and the resulting pricing distortions which occurred around these thresholds.

12. Under the proposed changes, rather than charging a single rate of tax on a transaction, each rate of tax is payable on the portion of the chargeable consideration which falls within the relevant band. The rates and bands have been adjusted to take account of the change.

Residential Property (from 4th December 2014)	
Part of relevant consideration	*Rate*
So much as does not exceed £125,000	0%
So much as exceeds £125,000 but does not exceed £250,000	2%
So much as exceeds £250,000 but does not exceed £925,000	5%
So much as exceeds £925,000 but does not exceed £1,500,000	10%
The remainder (if any)	12%

13. Under the changes, purchasers of residential property for £937,500 or less will pay the same or, in most cases, less tax than they would have paid under the old rules. Purchasers of residential property between £1m and £1.125m will also pay less tax. Purchasers of residential property for between £937,500 and £1m and above £1.125m will in most cases pay more.

14. The changes took effect by a Resolution passed by the House of Commons under section 5 Provisional Collection of Taxes Act 1968 on 3rd December 2014 followed by a Resolution passed by the House of Commons under section 1 of that Act on 4 December 2014. This Bill was introduced into the House of Commons on 4th December 2014. No prior announcement was made, and no draft issued for consultation, to prevent forestalling by purchasers and any resulting disruption of the housing market.

SUMMARY

15. The Bill amends the existing legislation which prescribes the method of calculating the amount of SDLT due in respect of residential property transactions and linked transactions and sets out a new table of rates and bands applying to residential property transactions. It includes transitional provisions which allow purchasers in transactions where contracts were exchanged before the measure was announced, but completion takes place afterwards, to choose whether the new or the old rates will apply.

OVERVIEW OF THE STRUCTURE OF THE BILL

16. The Bill has two clauses and one Schedule.

17. Clause 1 amends section 55 Finance Act 2003, which provides rules for calculating the amount of SDLT chargeable, and introduces the Schedule.

18. Clause 2 provides for citation, commencement and adds transitional rules which allow purchasers in certain circumstances to elect whether the new or the old rules in section 55 Finance Act 2003 will apply.

19. The Schedule makes consequential provisions.

TERRITORIAL EXTENT

20. The provisions in this Bill apply to residential property transactions throughout the United Kingdom. However, under provisions of the Scotland Act 2012, SDLT on Scottish land transactions will be replaced by the devolved Land and Buildings Transaction Tax. This change is expected to take effect for transactions where the effective date is on or after 1st April 2015.

COMMENTARY ON CLAUSES

Clause 1

21. Clause 1 amends section 55 Finance Act 2003, which provides rules for calculating the amount of SDLT chargeable, and introduces the Schedule.

22. The clause inserts new subsections (1B) and (1C) in section 55. New subsection (1B) provides that the amount of tax due in respect of a transaction comprising wholly residential property is to be calculated by applying each rate of tax to the appropriate part of the relevant consideration and adding together the different amounts. It substitutes a new Table A in section 55 setting out the rates and thresholds to be used.

23. New subsection (1C) provides that the amount of tax due in respect of a transaction which is one of a number of linked transactions comprising wholly residential property is to be calculated by applying each rate of tax to the appropriate part of the relevant consideration (which in this case is the aggregate chargeable consideration for all the linked transactions), adding together the different amounts, and then apportioning the resulting amount to the transaction in proportion to its share of the relevant consideration.

24. The clause amends subsection (2) of section 55 to ensure that the existing calculation rules continue to apply to a transaction, or linked transactions, which consist of or include land that is not residential property.

Clause 2

25. Clause 2 provides that the amendments made by the Act (principally the new calculation rules) apply to transactions where the effective date (in most cases the date of completion) is on or after 4th December 2014.

26. The clause provides that the purchaser may elect that in certain circumstances the new calculation rules do not apply. The first of these is where contracts were exchanged before 4th December 2014 and the contract was “substantially performed” (that is, the purchaser occupied the property or paid over the whole, or substantially the whole, of the consideration) before that date. The purpose of this is to protect a subsequent transaction on completion of the contract, on which further tax may be due.

27. The election may also be made in other cases where contracts were exchanged before 4th December 2014 and the contract is completed on or after that date, provided that there is no event on or after that date, of a kind listed at subsection (5), which results in the effect of the contract on completion being different from the effect of the contract when first entered into.

28. An election must be made in a land transaction return or an amendment to such a return and must meet any requirements specified by the Commissioners for Her Majesty's Revenue and Customs.

Schedule

29. The Schedule aims to make Part 4 Finance Act 2003 consistent with the substantive changes made by Clause 1 of the Bill. Specifically, it makes consequential amendments to SDLT provisions at section 74, section 75, Schedule 6B and Schedule 7 Finance Act 2003 which operate to reduce or limit the amount of tax due in respect of a transaction, rather than exempting it from charge altogether.

30. Section 74 Finance Act 2003 provides relief where lessees of flats exercise certain statutory rights collectively to purchase the freehold of their block. The existing relief sets the rate of SDLT according to the consideration given for the freehold divided by the number of qualifying flats. The Schedule provides that the amount of tax due is to be arrived at by dividing the consideration given for the freehold by the number of qualifying flats, calculating the amount of tax due on that sum and multiplying the result by the number of qualifying flats.

31. Section 75 Finance Act 2003 provides relief where members of a crofting community in Scotland exercise a statutory right to purchase their crofts in a single transaction through a community body. The existing relief sets the rate of SDLT according to the consideration given for the transaction divided by the number of crofts bought. The Schedule provides that the amount of tax due is to be arrived at by dividing the consideration given by the number of crofts, calculating the amount of tax due on that sum and multiplying the result by the number of crofts bought.

32. Schedule 6B Finance Act 2003 provides relief where multiple dwellings are acquired in a single transaction or in linked transactions. The existing relief sets the rate of SDLT according to the total consideration given for the dwellings divided by the number of dwellings, subject to a minimum rate of 1%. The present Schedule provides that the amount of tax due is to be arrived at by dividing the consideration given for the dwellings by the number of dwellings, calculating the amount of tax due on that sum and multiplying the result by the number of dwellings. If the resulting amount of tax is less than 1% of the total dwellings consideration, the latter figure is substituted. For linked transactions, the amount of tax is then apportioned to each transaction in proportion to its share of the total dwellings consideration.

33. Schedule 7 Finance Act 2003 provides (inter alia) acquisition relief, which applies where a land transaction is entered into as part of the transfer of a business undertaking. The effect of the relief is to restrict the rate of SDLT on such transactions to 0.5%, which is the

rate of stamp duty or stamp duty reserve tax which would apply to a transfer of shares in such an undertaking. The present Schedule provides that the amount of SDLT charged is limited to 0.5% of the chargeable consideration for the transaction.

34. The Schedule makes a number of minor consequential amendments to SDLT legislation, mainly to replace references to a rate of tax with references to an amount of tax.

FINANCIAL IMPACTS OF THE BILL

35. A summary of the financial effects of the Bill is provided below. Further detail is contained summary of impacts in the Tax Information and Impact Note.

36. The changes made by the Bill are expected to have the following exchequer impact:

- 2014-15 -£395m
- 2015-16 -£760m
- 2016-17 -£840m
- 2017-18 -£850m
- 2018-19 -£815m
- 2019-20 -£785m

37. The figures above are the revenue effects from the measure as announced and scored at Autumn Statement 2014.

SUMMARY OF THE IMPACT ASSESSMENT

38. In view of the subject-matter of the Bill, a full Impact Assessment is not necessary. A summary of the impacts is provided in the Tax Information and Impact Note.

39. The provisions included in this Bill are expected to have an Exchequer cost of £4.445bn between 2014-15 and 2019-20. The additional costs for HM Revenue and Customs in implementing the provisions are estimated to be £1.85m for staff resources and changes to IT systems.

EUROPEAN CONVENTION ON HUMAN RIGHTS

40. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions in the Bill with the Convention rights (as defined by section 1 of that Act).

41. Lord Newby has made the following statement:

> "*In my view the provisions of the Stamp Duty Land Tax Bill are compatible with the Convention rights.*"

42. The Bill engages Article 1 of Protocol 1 ("A1P1") to the Convention.

Article 1 Protocol 1

43. A1P1 protects the enjoyment of possessions and is inevitably engaged where taxation is in point because taxation deprives the person concerned of a possession, namely the amount of money that must be paid by way of tax. Taxation is however expressly provided for in the second paragraph of A1P1.

44. Further, the Courts have recognised that a State is entitled to a wide margin of appreciation when it comes to general measures of economic or social strategy.

Clause 1

45. Overall the change from a "slab" to a "slice" system for residential land transactions will reduce the amount of SDLT collected by the Exchequer. However, the burden of the tax will be shifted. At the rates contained in Clause 1, purchasers of residential property for £937,500 or less will pay the same or, in most cases, less tax than they would have paid under the old rules. Purchasers of residential property between £1m and £1.125m will also pay less tax. Purchasers of residential property for between £937,500 and £1m and above £1.125m will in most cases pay more.

46. A1P1 is engaged and interfered with by Clause 1, because a purchaser may be liable for an increased amount of SDLT in comparison with the "slab" system. This measure entails the transfer to the State of a greater amount of the taxpayer's possessions (money).

47. Although A1P1 is engaged and interfered with, the measure is an exercise of the State's right to raise taxes in accordance with law and falls within the wide margin of appreciation accorded to the State in the area of taxation. It is therefore compatible with Convention rights.

Clause 2

48. We do not consider that A1P1 is engaged by the transitional provisions. No purchaser who is liable to pay an increased amount of SDLT by Clause 1 can be compelled to do so if they have either exchanged contracts, or they have both exchanged contracts and substantially

performed that contract, prior to the Bill's provisions coming into force (4th December 2014). In either case (subject to safeguards against potential abuse of the transitional provision, in the case of a purchaser who has exchanged, but has not substantially performed that contract), they have the choice either to apply the "slab" or the "slice" system to that transaction. In this way, they cannot be further disadvantaged.

49. Because A1P1 is not engaged by the transitional provisions the question of the justification of any further interference with A1P1 does not arise.

Schedule

50. We do not consider that the consequential amendments contained in the Schedule raise any additional human rights points.

COMMENCEMENT DATES

51. The Bill comes into force on Royal Assent but applies in relation to transactions with an effective date that is, or is after, 4th December 2014. As a result of the resolutions passed by the House of Commons under the Provisional Collection of Taxes Act 1968, the Bill's provisions have effectively been in force since the afternoon of 3rd December 2014.

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