

The Law Society propose 'single test' to diminish stamp duty fears

Clear instructions to your solicitor/conveyancer on any property purchase is crucial and even more so now following the Stamp Duty Land Tax (SLDT) changes which come into force from 1 April 2016.

In last year's autumn statement and spending review, the government announced higher rates of SLDT on the purchase of additional residential properties as part of a 'five-point' plan to refocus housing support towards low-cost home ownership for first-time buyers.

In response The Law Society has now proposed a single test that seeks to resolve concerns arising from the government's higher stamp duty rates for second homes. The three percent rise in SLDT rates will affect buy-to-let landlords (with fifteen or fewer properties) and second home purchasers.

In a direct response to HM Treasury's consultation, the Law Society proposed a single test which could be applied at the point of purchase of an additional property. The test 'would simply be whether the property is being purchased as the main residence for one of the joint purchasers'.

The government's policy potentially penalises individuals who already have an investment property and now wish to buy a main residence. The Society's argument centers around the proposal that married couples and civil partners should not be treated as a 'single unit' and it is the principle of independent taxation 'dictates that you should look at the individual's tax position'.

Given the rise in parental and family help towards first time buyers, the governments proposals could prove detrimental in scenarios where a parent wants to help children buy a main residence, The Law Society said it was better 'to test the use to which the property is put rather than the formalities by which the parent invests'.

A proposed main residence replacement relief could cause problems in 'chain-breaking' situations, where a purchaser, let down by his buyer, ended up owning two properties and was then subject to an 'upfront charge' of an additional three percent.

The Law Society went further to attack the governments proposals suggesting that eighteen months was too short a period between the sale of a previous main residence and purchase of a new main residence, making the point that whilst the housing market in London is particularly buoyant, this is not necessarily the case in other areas of the country. Further, the government's proposals do not appear to consider the implications where a main residence is sold, and then a new one is being renovated or rebuilt.

The Society suggested a three-year period should be adopted, similar to other areas of SDLT such as in respect of claw back of higher threshold interests.

Issues identified by the Law Society extend to situations where given their role as tax collectors, the government requires UK conveyancers to report on, and make declarations on behalf of foreign purchasers, particularly in the ever growing London and Manchester property markets.

The problems identified by the Society include having regard to the difficulties faced by conveyancers in determining 'foreign' and 'ownership' by the purchaser and/or their spouse (treated as a single unit by the consultation proposal) as well as other family relatives and friends, foreign trusts and nominee arrangements, corporate ownership in which the foreign owner may have some interest and letters of wishes in respect of a portfolio of assets.

The Law Society went on to state it was 'rather irrational' to distinguish between overseas residential accommodation enjoyed by foreigners and overseas residential accommodation 'owned' by foreigners and further asked the government the basis for exempting purchasers who owned at least fifteen residential properties suggesting that the analysis done of the impact on the market was largely 'a finger in the air'.

Identifying that ninety percent of residential transactions will not pay the higher rate of SLDT, the Law Society assumed that 'the impact of a bulk-purchase test has been factored into that statistic'. The Law Society went further to say that the additional three percent charge should not apply to property traders, who 'provide a useful function in providing liquidity in the market and improving the quality of housing stock, especially in relation to properties at the lower end of the market'.

The Law Society recognised that it is important that the taxpayer understands that they will be responsible for making their own application for reimbursement unless they separately instruct their solicitor/conveyance to act in this regard, and called for guidance in 'plain English' for lay people to accompany any changes.

How can Gedye & Sons help?

With a wealth of experience in all areas of property law and in particular off plan resales and assignments (where we act for many domestic and foreign investors and purchasers) our property team can advise on the legal implications of the governments SLDT changes on your purchase.

For an initial discussion as to how we maybe able to assist please contact Nick Davis in the first instance on 020 3427 5081 or nick@gedye.co.uk