Association of
AMI
Mortgage Intermediaries

Association of Mortgage Intermediaries' response to HM Treasury consultation on higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties

This response is submitted on behalf of the Association of Mortgage Intermediaries (AMI). AMI is the trade association representing over 80% of UK mortgage intermediaries.

Intermediaries active in this market act on behalf of the consumer in selecting an appropriate lender and product to meet the individual consumer's mortgage requirements. Our members also provide access to associated protection products. Approximately 70% of all UK mortgage transactions are advised by intermediaries.

Our members are authorised and regulated by the Financial Conduct Authority (FCA) to carry out mortgage and insurance mediation activities. Firms range from sole traders through to national firms and networks, with thousands of advisers.

Response

Whilst we understand that the government's aim is to increase home ownership and support first time buyers, we would highlight that elements of these proposals will make it more difficult for, and even deter, individuals assisted by their family in the purchase of a property. Not only will this affect children relying on a parent to either solely or jointly purchase their first property, but also children purchasing property for elderly parents.

In April 2014 the Mortgage Market Review introduced rigorous requirements on lenders when assessing the affordability of borrowers that has seen many now unable to get a mortgage. Whilst there is a large divergence in house prices between UK regions, the southern half of England (including the Midlands) has seen prices risen above their 2007 peak[1], with an increase of over 30% in London. This has been bolstered by demand exceeding supply. This demand has been partly fuelled by the number of cash transactions which over the last two years has dramatically increased to reach 3% above its 2007 peak, whereas the biggest fall in housing transactions since the peak is in buy to let which has fallen by 44%[2]. The lack of supply has been subject to a downward spiral where individuals wishing to move home are waiting to find a property that is suitable before putting their property on the market and ultimately being unsuccessful in their search.

These key factors, along with the much lower wage inflation levels during the same period[3], have contributed to difficulties for individuals in purchasing property and requiring a greater financial commitment. Our members often see joint applications from first time buyers with a parent in order to be able to meet the affordability requirements. The proposal for increased stamp duty to apply in these circumstances and to cover the whole transaction will stop such applications being made, and as a result individuals will delay their purchase until they are able to raise a larger deposit and/or meet the income requirements themselves.

[1] Nationwide House Price Index data as at Q4 2015
[2] Nationwide graph produced for Financial Services Expo September 2015
[3] Average total weekly earnings has increased 13% over the 8 years to Nov 2015, an average of 2% p.a. (ONS)

It should be noted that lenders will not accept a guarantor for a mortgage without the guarantor owning the property. As a result first time buyers will be renting for longer and as tenants they will be penalised (again) by these proposals through increased rent and a reduction in the supply of rental properties.

We do not believe the proposals will affect purchasers of higher value properties who will be undeterred by the increase, therefore this will not greatly affect the London market. However this will disturb the first time buyer and purchase market particularly for properties up to £250,000, and will therefore have larger regional impact, where buyers currently paying £2,500 SDLT on a £250,000 property will see a disproportionate four-fold increase to £10,000 SDLT.

We believe the government's help to buy initiatives have a positive impact on the first time buyer market, and the focus on increasing housing supply is central in encouraging home ownership and ensuring stability in house prices. However we believe these markets will retract if there is not an exemption for family assisted purchases.

We believe there needs to be greater clarity in these proposals and that there should be further exemptions to ensure fairness and consistency with other government objectives.

Overall we would question the use of fiscal measures to engineer a market in favour of large businesses. As a trade body our interests lie in markets working well for large and small firms as well as consumers. We are concerned that these proposals marginalise small firms thereby reducing competition, ultimately leading to poor outcomes for both tenants and borrowers. The short timescales of these proposals will result in many housing transactions falling through. In any chain it is highly likely one of the parties will be subject to these increased rates and will fail to complete before 1 April. The scale of the disruption to the housing market and its lasting effect should not be underestimated.

We believe that together with the reduction in mortgage interest relief and any interventions made by the Financial Policy Committee (FPC) on buy-to-let, there will be an overall detrimental impact to all markets, not just buy-to-let, which may instead benefit from less blunt and more natural changes in the market. We are concerned that these changes might all begin to impact at the same time as interest rate rises and in combination these could create house price falls that the FPC are trying to avoid.

Questions

Q1: Are there any difficult circumstances involving family breakdown which mean that treating married couples and civil partners as one unit until they are separated is not appropriate? If there are, how would you suggest those circumstances are treated?

If a married couple own a property jointly and subsequently separate but one party stays in the property, it is common, particularly when the couple have children who will also remain in the property, for both names to remain on the mortgage and title deed. This will be necessary to ensure the remaining party meets the mortgage affordability requirements. The proposals will unfairly affect the departing party as they will have to pay the increased SDLT on a property that will be their main residence. We do not consider that this was the intention of the proposals and ask that an exemption should apply in such and similar instances.

Q2: Do you agree that, where property is purchased jointly, if any of the purchasers in a transaction are purchasing an additional residential property and not replacing a main residence, the higher rates should apply to the whole transaction value? If not, how would you suggest the government treats joint purchasers?

We do not agree that the higher rates should apply to the whole transaction value as this unfairly treats joint purchasers and contradicts support to first time buyers. We are particularly concerned about the impact on family assisted purchases where often first time buyers purchase a property jointly with a parent in order to get on the housing ladder quicker, because they are unable to meet the FCA affordability requirements themselves. Whilst the consultation suggests parents acting as a guarantor on a mortgage is a solution, most lenders will not accept this unless the parent is also on the title deed.

We believe there should be an exemption for family assisted purchases (which would also cover children purchasing a property for elderly parents), which could be effected by stipulating if one of the purchasers will use the property as their main residence then the higher rates do not apply. This would also be a fairer solution for couples where only one of the parties is acquiring a new main residence, and would address the issue raised in Q1.

Q3: For the first stage of the test for determining whether a purchaser is replacing an only or main residence, does considering previously disposed of property in the way presented cause practical difficulties or hardship in particular cases?

We believe it is unfair for the 18 month rule to be applied retrospectively. For example, an individual who sold their main residence two years ago and moved to rented accommodation (in order to be an attractive buyer in what is currently a seller's market due to the lack of available properties), but separately owns a buy-to-let property, would be penalised if they now purchase a property to be used as their main residence. In these circumstances there has been clearly no intention to avoid tax because these proposals did not exist when the property was sold. Therefore the test that the main residence must be purchased within 18 months of the previous one should not be applied to properties sold before 1 April 2016 (or even to properties sold before 28 December 2015, when the consultation was published as there was no indication prior to this that these increases would be introduced). This would ensure that buyers who are currently transitioning between main residences, and may own one or more rental properties, are not unfairly punished.

We would also want to see similar fair treatment given to a buyer who has never owned their main residence but owns rental properties and wishes to purchase a main residence after 1 April.

The numerous examples set out in the consultation demonstrate the complexities of the current proposals and that there will be some instances, such as those above, where buyers of main residences are unfairly treated. As the overall policy intention appears to be not to charge additional SDLT on purchases of main residences, we would suggest that an amendment is made so simply if a main residence is being purchased or replaced then additional SDLT is not payable. This would ensure fairness and consistency.

We support the response from our fellow trade body the CML that rather than levy the tax upfront with the prospect of an eventual rebate, buyers should be allowed to defer the payment of higher SDLT for up to 18 months, in order to allow for such temporary situations to unwind.

Q4: For the second stage of the test, do you agree that the rule should require the purchaser to intend to use the newly purchased property as their only or main residence?

We agree except for the exemption that should be made where one of the purchasers (rather than all) will use the property as their main residence. We do not believe that the residence test for SDLT should be aligned with the residence test for Capital Gains Tax.

Q5: Do you agree that 18 months is a reasonable length of time to allow purchasers a period between sale of a previous main residence and purchase of a new main residence that allows someone to claim they are replacing their only or main residence and therefore not pay the higher rates of SDLT?

We agree.

Q6: Do you agree there should be a refund mechanism in place for those who sell their previous main residence up to 18 months after the purchase of a new main residence? Are there any other cases where a refund of the additional SDLT paid should be given?

We agree there should be a refund mechanism in place, but would prefer this payment to be deferred.

Q7: Can you suggest any other actions the government could take to mitigate the cash flow impact on those who only temporarily own two residential properties?

As per Q6.

Q8: Are there any other situations regarding main residences which require further consideration?

We are concerned that this may unduly penalise those that would be able to purchase a flat in the town or City where they now work for weekday occupancy and not disturbing the family home where their partner and children may be employed and in school. Whilst this is related to employment, it is common for employers to provide an allowance rather than accommodation so would not be exempt under the current proposals.

Q9: Would there be a benefit to a significant number of purchasers if the test for whether someone owns one, or more than one, residential properties, were undertaken at the time of submitting the SDLT return, rather than at the end of the day of the transaction?

We believe there should be an allowance for purchasers whose sale of a main residence does not immediately precede the purchase, as it will be burdensome to have to reclaim a refund. The timescale to complete the SDLT return should remain at 30 days, if not extended in light of these proposals, instead of reducing this to 14 days.

Q10: Do you agree with the government's proposed approach to considering property owned anywhere in the world when determining whether the higher rates of SDLT will be due?

We would question the practicality of this approach, but note this would be best answered by solicitors who would be ultimately be responsible for this. This seems to be unnecessarily stringent. A test as to whether the borrower intends to live in the property as their main residence in the UK would be more straightforward.

Q11: Do you agree with the proposed treatment of furnished holiday lets?

No comment.

Q12: Are there any other cases which the government should consider?

No comment.

Q13: Do you agree that an exemption should be available to individual investors as well as all non-natural persons? Alternatively, is there evidence to suggest any exemption should be limited to only certain types of purchaser? If so, which types of purchaser?

We agree that an exemption should be available to individual investors although we would question the criteria for this exemption (see below).

Q14: Do you think that either the bulk purchase of at least 15 residential properties or a portfolio test where a purchaser must own at least 15 residential properties are appropriate criteria for the exemption? Which would be better targeted?

We would welcome clarification of the basis of the 15 property threshold and whether there is any research to indicate this particular level as an indicator of large scale investors. For example, the number of properties that a landlord will hold as an individual before considering setting up a company is usually much lower than 15 – the breaking point is around 3 or 4. Within the sector we consider that the business test should be aligned with this level therefore owning 5 or more properties would be a more appropriate criteria for the exemption.

We are generally concerned around creating a policy which favours large businesses as this is anti-competitive. We do not agree with marginalising smaller businesses. If the government wishes to professionalise the landlord sector then focusing on standards that landlords must adhere to is the fairest solution, which will result in better outcomes for tenants. The current proposals risk causing a stagnation in property turnover. Those landlords which do not meet the exemption but are undeterred by the increase will ultimately increase rental costs.

Q15: Are there better alternative or additional tests that could be used to better target an exemption and fulfil the government's wider housing objectives?

No comment.

Q16: Are there any other issues or factors the government should take into account in designing an exemption from the higher rates?

As per Q2.

Q17: Do any specific kinds of collective investment vehicle or other non-individuals need to be treated differently to companies?

No comment.

Q18: Do you agree with the proposed treatment of trusts, including the higher rates of SDLT applying to trusts purchasing residential property except where a purchase is a first property or replacement of a main residence for a beneficiary?

No comment.

Q19: Do you think that purchasers are more likely to give accurate answers to main residence questions if HMRC provides specific questions for the conveyancer to ask the purchaser?

No comment.

Q20: Would a formal declaration by the purchaser that the answers to any such questions are accurate help to increase compliance without creating undue burdens for conveyancers? How do you think such a declaration should work?

No comment.

Q21: Besides normal publicly available guidance, are there any additional products that HMRC can provide to help purchasers understand what rates of tax they will be paying on a planned purchase?

No comment.