



## HomeOwners Alliance response to consultation on: “Higher rates of Stamp Duty Land Tax on purchases of additional residential properties”

### Foreword

The **HomeOwners Alliance (HOA)** is the only consumer group in the UK representing and championing Britain’s 17 million homeowners and 5 million aspiring homeowners.

The HOA strongly welcomes the government’s ambition to help British householders realise their dream of owning the roof over their head. The overwhelming majority of homeowners aspire to own their own home, and yet **homeownership levels have dropped to their lowest since the 1980s**. There are over 5 million households which want to own their own home but don’t.

In particular, the HOA welcomes the government’s plans to recognise homeownership in the **Stamp Duty Land Tax (SDLT) system**, which will make it easier for householders to compete in the property market with landlords, second property owners and foreign investors. There are major economic and social benefits to wider homeownership, as outlined in our report [“Death of a Dream”](#) – it helps reduce poverty in old age, reduces benefits use and increases family security and stability. It is right that these wider social and economic benefits are recognised in the tax system, by differentiating between those buying property as an investment and those buying a property as their home. It will also help address the intergenerational inequality that currently exists as homes have become more and more unaffordable for the first time buyer. It is a reform that the HOA has long called for.

These **reforms to stamp duty will benefit the overwhelming majority of homeowners**, and encourage homeownership. However, we believe the particular structure of the SDLT changes proposed is flawed. It is overly complex, generating numerous unintended consequences, with many potential perverse incentives, and making it less likely to achieve the government’s desired objectives. Some of these issues can be resolved with relatively modest changes as discussed in the consultation paper, but many can’t. We urge the government to overhaul the design of the SDLT surcharge to make it simpler, less prone to unintended consequences and more aligned with government policy of encouraging homeownership – as originally proposed by the HomeOwners Alliance, the surcharge should simply apply to all residential properties that are bought for any purpose other than being a primary residential property. There is a risk that moving ahead with flawed proposals will undermine support for what is otherwise a popular policy.

As part of this response, we have consulted with our membership. There is clearly wide support for the measures, but concerns are mounting about how exactly it will operate, and the difficulties that it could cause. We have included real life case studies from our membership in the response.

We re-iterate our previously stated position that **stamp duty should, like other transaction taxes (e.g. VAT), be paid by the seller not the buyer**. Sellers are more likely to be reducing their exposure to property (downsizing, selling inherited property) and so in a stronger position to pay the tax,

**EMBARGOED 00:01 MONDAY 1<sup>st</sup> FEBRUARY 2016**

while buyers are more likely to be increasing their exposure to property (first time buyers, moving from first home to family house), and are in a more financially stretched circumstance. Imposing stamp duty on sellers rather than buyers would automatically exempt all first time buyers from stamp duty.

**Paula Higgins, CEO**

January 2016

## 1. Structure of the additional residential property SDLT surcharge

1.1 The reform originally called for by the HOA was simply that there should be a SDLT surcharge for properties that are **not** being bought as primary residential properties: people buying holiday homes, investment properties and second homes should pay more SDLT than someone buying a home to live in. This aligns SDLT with the capital gains tax regime, which also recognises homeownership by not imposing capital gains tax on primary residential properties, but it is imposed on properties owned for other purposes. Both taxes would then be aligned with the objective of encouraging homeownership. Although there would be some issues to address, these are simply resolved without significant unintended consequences. However, the stamp duty reforms as proposed by the government do not so much encourage homeownership, as encourage ownership of one property for whatever reason (and whether the owner is a UK resident or lives overseas). Instead of the simple criterion for the SDLT surcharge being:

- i) Is the property being bought for any purpose other than as a primary residential property?

The Government is planning a two-stage decision-making process:

- i) Will the purchaser own two or more properties at the end of the transaction?
- ii) Does the new property replace an existing primary residence?

The government does not explain the reasons for adding this complexity, but it makes the policy more difficult to understand and communicate to the general public. This will lead to more disputes between homeowners and HMRC, and lead to most of the potential unintended consequences the government seeks to address in the consultation document. It also leads to many unintended consequences the government does not address in its consultation document, which we outline below.

The **proposed reforms are misaligned with the government objective of encouraging homeownership**, as they give tax advantages to ownership of single properties, rather than homes. The HOA does not think there is any economic or social justification for this.

1.2 The proposed structure will lead to many unintended consequences and perverse incentives that are not covered in the government's consultation document. Some of the issues the HOA sees with this structure are:

- i) **First time homebuyers will end up paying higher SDLT than at present if they already own a property.** This goes against the whole objective of encouraging homeownership. This perverse consequence would be avoided if the surcharge was simply applied to properties that were not being bought as primary residential properties.

### EXAMPLE 1

*Miss C inherited a small seaside holiday cottage when her mother died. She now wants to buy her first home to live in the city where she works and where her boyfriend lives. However, because she already has one property, and because she is not replacing an existing residential home, she will have to pay the stamp duty surcharge on her first home, making it more expensive to buy her first home than under the current system.*

- ii) **A first time homebuyer could be required to pay more SDLT than an existing homeowner with a large property portfolio.** This goes directly against the government's objectives of using the stamp duty reforms to encourage homeownership. This perverse consequence would be avoided if the surcharge was simply applied to properties that were not being bought as primary residential properties.

**EXAMPLE 2:**

*Mr A is a young professional working hard in London and renting his home, who inherited his grandfather's flat in Newcastle, which he rents out to students. Mrs B has a portfolio of ten rental properties, and a main residential home. They both compete to buy the same home in London, but Mr A will be required to pay the 3% stamp duty surcharge, even though he is buying his first home, while Mrs B will not, even though she already has a home and a large property portfolio.*

- iii) The capital gains tax regime and stamp duty regime – both aimed at encouraging homeownership – will sometimes pull in opposite directions. This shows the misconceived structure of the proposed SDLT surcharge, leading to public confusion about government policy. **This confusion would be resolved if the stamp duty surcharge was simply applied to properties not being bought as primary residential properties.**

**EXAMPLE 3:**

*Mrs C buys a single buy-to-let property for investment purposes, and then a year later decides to buy a primary residential property. She will have to pay higher stamp duty on her home but not pay capital gains tax on it; on her buy-to-let property she will pay lower SDLT but will be required to pay capital gains tax. Mrs C's accountant does well. [Please note, this is basically the same as your example 2, but highlighting the wider tax contradictions around it]*

- iv) It is likely to cause particular problems for people buying new build properties, including elderly downshifters moving into retirement homes, as the timing of completion is dictated by the property developer, and often the homebuyer only get six weeks' notice of the completion date. This can make it extremely difficult for homebuyers to time the sale of their old property with the purchase of the new build (and virtually impossible to do it as part of a property chain). That means that **an existing homeowner moving into a new build will almost always end up having to pay the 3% surcharge**, only to reclaim it later. This will cause fairly widespread financial distress, which would be readily avoided if HMT changed the surcharge as the HOA suggests.
- v) People moving for work and renting out their own home would be caught by the surcharge if they don't move back into their original home before they purchase somewhere else, as they would not be replacing their family home (but moving from a rented home to a new one). They would not be able to take advantage of the government's proposed 18 month window because they are moving from a rented property, and could only avoid the surcharge if they make sure they complete the sale of their old home before the purchase of the new home, which is an entirely unnecessary complication.

**REAL CASE STUDY 1:**

*“My wife and I owned a house in Kentish Town, and were then posted to Brussels for three years where we had two children. We rented our house in Kentish Town, but when we were due to come back to London, rather than move back there, we needed a bigger house because we now had children. We put in an offer on our dream home in Muswell Hill, while selling our house in Kentish Town. However, the sale of the house in Kentish Town took too long, and we had to take out an emergency bridging loan to complete the purchase of the Muswell Hill house, whose owner had put it back on the market because it was taking so long. If this happened now we would have had to pay the 3% surcharge on our Muswell Hill home because we already owned a property (even though we were trying to sell it) and because we were moving from a rented property in Brussels to a home we owned in the UK (so we couldn’t take advantage of the 18 month window). We were already financially stretched beyond the limit, and the 3% stamp duty surcharge would have meant there was no way we could have bought our home in Muswell Hill.”*

- vi) Parents will be incentivised to buy investment properties in each of their children’s names, perhaps through a trust. There is obviously complex law around this, but if a parent brought a property entirely in the name of their one year old child, then because it is the child’s first property, they could avoid paying the SDLT surcharge. Parents with several children could buy one property in each of their names to avoid the surcharge.
- vii) Property owners could be given a financial incentive to “churn” properties in the housing market to avoid paying the surcharge, creating a small industry in totally legally avoiding the tax. An owner of a cheaper buy-to-let property who wants to buy a more expensive home to live in would reduce their stamp duty bill by first selling the buy-to-let property, then buying their home, then buying the buy-to-let property back again.

**REAL CASE STUDY 2:**

*Mrs D has a buy-to-let property worth £200,000, but wants to buy a home to live in which is worth £800,000. Since it is a second home, the stamp duty surcharge would apply, and she would have to pay an additional stamp duty bill of £24,000. So she has decided to sell her first property to a friend, Mr B, for £200,000, incurring a stamp duty bill of £1,500, and then buy her home. Because it is now her only property, she will avoid the £24,000 stamp duty surcharge. She will then buy back the buy-to-let property from her friend Mr B, incurring the 3% stamp duty surcharge, but because it is a cheaper property it is now only £6,000 (on top of the basic stamp duty of £1,500). By churning the properties this way she avoids a stamp duty surcharge of £24,000, and pays a total extra stamp duty of £9,000 – a saving of £15,000. Even with lawyer’s fees, she still has a major financial incentive to churn her buy-to-let property.*

- viii) The SDLT surcharge as proposed **treats a first time homebuyer in the UK the same as a foreign buyer making a speculative investment in the UK residential property market, even if they want to leave the property empty** (if they don’t already own a property in their own country). There is no public policy justification for this, and goes against the government’s aim of encouraging homeownership. This issue would be resolved if the stamp duty surcharge applied to all properties not being bought as a primary residential property.
- ix) **A foreign buyer who does not own a home in their own country would be paying less stamp duty than a foreign buyer who does own their home in their own country.** In

effect, the government is exporting its policy of encouraging ownership of a single property to all buyers around the world. There is no public policy justification for this differential tax treatment. This anomaly would be avoided if the stamp duty surcharge applied to all properties not being bought as a residential property.

1.3 In addition to these unintended consequences, many of the complexities the government highlights in its consultation document would be resolved if the SDLT surcharge was **only applied to properties that are not being used as primary residential properties**. For example:

- i) In Question 2 (and consultation paper example 19) the government asks about the situation when property is purchased jointly, with one of the joint-purchasers already owning somewhere but not the other. The government's solution (that the surcharge applies to the whole purchase) means that someone with no property whatsoever will pay a stamp duty surcharge even though they are buying their first home, just because they are buying it jointly with someone who does own another property. If the SDLT surcharge just applied to purchases of non-residential property, this position would be avoided (no surcharge would be paid). The consultation paper's example 21 (where one of the co-purchasers doesn't live there and one does) is more complicated, and the decision could justifiably be made either way.
- ii) Because the SDLT surcharge is avoided if someone is replacing an existing primary residence, the government's proposals require a two stage decision making process, firstly assessing whether their old property is their primary residence, and secondly whether their new one will be their primary residence. This **greater complexity will lead to increased conveyancing costs for all homebuyers**. That would be simplified under the HOA proposals into a single decision – whether the new property is to be used as the primary residence of the owner(s).
- iii) The government's concerns about overlaps and underlaps in ownership of primary residences – i.e. people owning two for a while or there being a gap in ownership for a while – are also dealt with by a more simplified stamp duty surcharge. The government would not be in a position of needing to rebate stamp duty that has already been paid because someone has managed to sell a property within 18 months of buying another one.
- iv) The HOA does accept there are complications that could potentially arise from having a more simplified SDLT surcharge, which is only imposed on properties not being bought as primary residential properties. In particular, it could lead to abuse if people may rent out rather than sell their old home when they move to a new home; homeowners could do that on a serial basis, paying lower stamp duty as they acquire a property and quickly move on to another property. That potential abuse is likely to be marginal (very few people could afford to do it or have the incentive to), but the way to prevent it is to require the SDLT surcharge to be paid on a new home if people decide not to sell their old home within 18 months of moving to a new home (this is similar to our proposal outline in Question 5 and 6). That way people could not abuse the system by repeatedly moving from one home to another paying a lower level of stamp duty to build up a property portfolio.

## 2. Answers to consultation questions

### 2.1 Question 1

There are other situations in which the stamp duty surcharge could be unfair after the break down of a relationship. In some circumstances, one partner is required to retain co-ownership of the original family home even after a divorce for mortgage purposes, but would be forced to pay the stamp duty surcharge on setting up a new family home. There could be specific family reasons (for example to do with inheritance) why they do not want to legally register the separation, even though they are in fact separated, and it would be unfair to charge the separated partner the stamp duty surcharge on setting up a new home.

#### **EXAMPLE 4:**

*Mr D and Mrs D co-own the family home, with a mortgage that is based on Mr D's salary since Mrs D does not work in paid employment but looks after their young children. Mr D and Mrs D divorce, and Mr D moves out to set up a new family home. However, since Mrs D does not have an income, she cannot transfer the mortgage to her name, and it remains in her former husband's name. Since the mortgage is in his name, he has to retain co-ownership of the original family home. As a result he would have to pay the stamp duty surcharge in setting up a new family home.*

### 2.2 Question 2

We think that it is anomalous and unfair that a first time homebuyer would have to pay the stamp duty surcharge just because they are co-buying with someone who already owns a share of the property. **The stamp duty surcharge should only apply to the share of the property that will be owned by the co-purchaser who already owns a property.** So, if the co-purchaser would own a third of the new property, they would have to pay the stamp duty surcharge on that third. This would not be an issue if the surcharge only applied to properties not being bought as primary residences.

#### **REAL CASE STUDY 3:**

*"I appreciate the incentive behind changes, to deter would be buy to let investors taking all the houses and leaving potential 1st time buyers unable to find a property affordable to buy - a situation I find myself in, currently searching for my 1st home since last September having painfully saved for my deposit for years. The problem however is I am now in a relationship and wish to jointly buy with my partner as our 1st home together. But that's the issue - he owns a house already with his ex-partner, it is proving messy and difficult to sort out the loose ends, and we wish to progress on our purchase regardless. However should we complete post April we will face paying the additional stamp duty (which we couldn't afford), it is unfair that I as 1st time buyer am forced to pay additional stamp duty as my partner has already purchased. There should be an exemption for a couple buying when one party does not have a 2nd property or at the very least a lesser % or exempt from 50% of the bill."*

### 2.3 Question 3

We have nothing to add

### 2.4 Question 4

We strongly agree that the new property should be intended to be used as their primary residential property – that ensures that the surcharge is aligned with the government objective of encouraging homeownership.

## 2.5 Question 5

We believe that the period should be extended slightly to two years. If a house purchase falls through, but homeowners are keen to continue with the sale of their existing home, they often end up renting for two years while looking for a new home. Also, homeowners could find themselves in the position of waiting for a two year fixed rate mortgage to come to an end so they can sell their home without penalty. Finding a new home, and going through the lengthy and unpredictable purchasing process – which might also be subject to breakdowns in chains and sales agreement – means that people can often take well over 18 months to secure a new home. It could **cause undue hardship to force them to buy the new home within 18 months or pay a 3% stamp duty surcharge**. It will in any case create a very dramatic “hard deadline” to buying a new house, which if they fail to meet could add tens of thousands of pounds to their costs. It is really not clear what the public policy objective of this is. As stated in section 1, this is an anomaly that is entirely created by the government’s overly complicated structure for the stamp duty surcharge. If the surcharge was simply applied to purchases of residential properties that are not being used as primary residences, then the issue would not arise.

## 2.6 Question 6

For the reasons outlined in our response to Question 5, we believe that **homebuyers should have up to 2 years to sell their old home after purchasing their new home before being penalised by having to pay the stamp duty surcharge**. Even then, homebuyers could find themselves in serious financial difficulty having to potentially suddenly pay the 3% stamp duty surcharge on their new home because the sale of their old home unexpectedly fell through. Having to suddenly find an extra 3% of the purchase price of their new home to give to the government would come exactly at the time of maximum financial stress, and could force many homeowners to have to pull out of buying their new home. Homeowners have already been in contact with the HOA fearing this particular problem (see case studies below).

It would mean that a welcome policy that is aimed at helping homeowners will actually lead to some people not being able to get a home. An obvious alternative is to reverse the burden of taxation, by only requiring that homeowners pay the 3% surcharge within 18 months (or two years as we suggest) if they have still not sold their old home. That would mean that the extra payment would not come at the time of maximum financial stress for homeowners, and would not require the government to charge the tax and then give the refund. Clearly, HMRC would need to have an administrative process for this, but it would not be that difficult to impose a deferred tax on homeowners (to be paid in 18 months or two years), which would not need to be paid if they can show they have sold their old home by that time. In other parts of the tax system, deferring tax assets is a routine administrative issue.

### REAL CASE STUDY 4:

*“I just wanted to email to say how sensible your suggestion of only adding the extra 3% stamp duty after 18 months if the original property hasn't been sold. Me and my wife are currently in this situation and although we will exchange before April, our completion is due in June 2016. My original property was bought prior to meeting my wife and I wish to sell next year once my 2 year fixed deal has ended so as to not incur any charges. The extra stamp duty is putting a lot of financial stress on us in the short term and not having any information on how a refund can be claimed once I sell my original property certainly does not help. I hope you are able to put your suggestion forward and that it is taken seriously.”*

**REAL CASE STUDY 5:**

*“My wife and I plan to move home in 2016, after the second home stamp duty surcharge starts. We are wondering what will happen if we buy a new home before disposing of our old home? Will we automatically incur the second home stamp duty surcharge? We are in favour of extra tax on second homes. If necessary, we have the means to pay the extra duty up front and claim it back. However, I can imagine that paying up front, or even in instalments, will deter some people from moving, especially downsizing. Or it might drive people into the hands of finance companies who are no doubt lining up to exploit the situation. For people who prior to moving only own one home and who declare that they fully intend to sell the old home, could the extra duty be flagged as due in 18 months’ time if they have not actually sold?”*

**2.7 Question 7**

As outlined in Question 6, the government should require people to pay the surcharge after two years if they have not sold their old home by that time. That would massively reduce the financial distress potentially caused, and is not administratively difficult.

**2.8 Question 8**

There are incidences outlined in Question 1

**2.9 Question 9**

We do not have the data to provide a numerical answer to this question. But it is obviously fairer and less administratively burdensome that if someone is within days of selling their old home they do not have to find the money to pay the stamp duty surcharge and then reclaim it. We cannot see any downside to government of having the property ownership test at the time of submitting the SDLT return, and considerable upside to those homeowners affected. We cannot see any public policy reason for not doing it this way. We would point out that reversing the burden of payment so the homeowner pays the stamp duty surcharge if they haven’t sold their old home within 18 months or two years would avoid this issue. It would also be avoided if the stamp duty surcharge only applied to properties being bought for reasons other than being primary residences.

**2.10 Question 10**

We very strongly support the government’s approach, and that the stamp duty surcharge test should be based on global ownership of property. Otherwise it would lead to extreme iniquity and unfairness, and reward foreign property magnates buying their first property in the UK as a holiday home. However, we do have doubts about the practical enforceability of this, as it would have to be self-declared, and HMRC would usually have no way to verify the claims, unless it got access to a global database of land registries. Again, this whole issue would not arise if the stamp duty surcharge simply applied to all residential properties being bought for any purpose other than as a primary residence.

**2.11 Question 11**

Holiday lets are not primary residential properties, and so we agree with this approach.

**2.12 Questions 12, 13, 14, 15, 16, 17, 18**

No comment

### 2.13 Question 19

It would be good to have specific questions to ask the purchaser as it will reduce confusion or misunderstanding about what a primary residence is, and therefore better compliance. It will clearly be an increase in bureaucracy around home buying, but only marginally as the questions can be answered in seconds and will not require provision of extra evidence. It will however increase conveyancing costs to some extent.

### 2.14 Question 20

We believe such a declaration would suffice, reinforced by the knowledge that HMRC could and on occasions does check. This is similar to self-assessment on income tax returns, where the taxpayer has to declare all the information is accurate, knowing that HMRC can and sometimes does check.

### 2.15 Question 21

It would be good to ensure that estate agents are acquainted with the new stamp duty surcharge as they often end up being the first (albeit informal) advisors to homebuyers about what stamp duty would be due on the purchase of a particular property. It could clearly lead to confusion (and increased disputes with HMRC) if estate agents routinely told buyers of second homes they would not pay the surcharge when they would, in an effort to make a property seem more affordable. Specifically, agents shouldn't provide advice but should be able to hand out self-explanatory leaflets supplied by HMRC. HMRC should have contact details for specific enquiries about the 3% surcharge.

## About us

The HomeOwners Alliance champions the interests of Britain's homeowners and aspiring homeowners.

We are a consumer group providing helpful advice and services and acting as the voice of the homeowner in the media, lobbying for their interests in government, and campaigning against bad practices in industry.

We directly engage with government and the media by conducting independent research and publishing reports that promote and champion the interests of homeowners

At [hoa.org.uk](http://hoa.org.uk), we provide independent advice for the key moments in owning a home, supported by legal and industry experts.

We believe we are one of Britain's most popular and fastest growing property advice websites, staying true to our mission to help homeowners facing some of the biggest and most complex decisions of their lives. Last year, **more than 2 million homeowners and aspiring homeowners visited our website, [www.hoa.org.uk](http://www.hoa.org.uk)**; viewing nearly 5 million pages.



T +44 (0)20 3397 3292  
E [hello@hoa.org.uk](mailto:hello@hoa.org.uk)  
[@HomeownersAll](https://twitter.com/HomeownersAll)  
[www.hoa.org.uk](http://www.hoa.org.uk)