# Stamp duty on land and buildings

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Stamp duty is charged on legal and commercial documents, the most important of which are shares, and documents showing the sale or lease of land and buildings. The rates of duty vary with the type of document and the nature of the property.[1] Transfers of other types of property are also within the scope of stamp duty, though there are certain exemptions; these include, acquisitions by a charity, transfers between group companies, certain purchases and leases granted by registered social landlords and certain acquisitions of land in designated 'disadvantaged areas'.

Stamp duty is paid each year by around 1.4 million individuals buying houses, around 80,000 companies purchasing commercial property, land or housing stock, and around 250,000 individuals and businesses taking out new leases on residential and commercial property.[2] Total receipts from stamp duty on land and property were £5,007 million in 2002-03.[3]

At the time of the 2002 Budget the Government published a consultation paper on modernising stamp duty to tackle tax avoidance, support the introduction of electronic conveyancing, and 'create a legal framework for stamp duty in line with more modern taxes.'[4] In Budget 2003 the Government confirmed that a modernised system – renamed 'stamp duty land tax' – would be introduced from 1 December 2003;[5] to this end legislation was introduced in the *Finance Act 2003* (ss 42-124). A number of further changes were made – to the charge on commercial leases in particular – when regulations implementing the new regime were presented to the House.[6] This reform did not make any change to the rates of tax charged on a standard house purchase, though it did amend the compliance procedure for paying the tax. Detailed information is published on the Inland Revenue' site.[7]

This note provides a short summary of the structure of stamp duties and the changes made since 1997, before looking at the introduction of stamp duty land tax (SDLT).

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1 Transfers of stocks and shares are chargeable on the price of the shares, at a single rate of ½ per cent, and with no threshold. Details on the coverage of stocks, shares and debentures are given in an appendix.
2 Inland Revenue Budget press notice REV4, 17 April 2002
3 *Inland Revenue Statistics* table T15.1 http://www.inlandrevenue.gov.uk/stats/stamp_duty/03IR151.pdf
4 Inland Revenue, *Modernising stamp duty on land and buildings in the UK*, April 2002; *Budget 2002* HC 592 April 2002 p 102.
5 *Budget 2003* HC 500 April 2003 p 122
6 SI 2003/2816 & SI 2003/2914. These were approved on 12 November 2003 (HC Deb cc 337-378).
7 http://www.inlandrevenue.gov.uk/so/

## Contents



# A. Stamp duty rates and receipts

The current rates of stamp duty on land and property are as follows:

- Zero if the price paid is up to £60,000
- £1 per £100 or part of £100 if the price is more than £60,000 but not more than £250,000
- £3 per £100 or part of £100, if the price is more than £250,000 but not more than £500,000;
- £4 per £100 or part of £100 if the price is more than £500,000.

Each rate of duty applies to the whole price. So for example the duty on the purchase of a property for £170,000 is £1,700; and a price of £300,000 will attract duty of £9,000.

*Prior* to the introduction of SDLT on 1 December 2003, payment of duty was indicated by stamps put on the documents following presentation to the Stamp Office, and duty was charged when the document was executed. Under the new regime the tax charge is triggered by the transaction itself. A Land Transaction Return must be completed either by the purchaser themselves or their agent (normally, their solicitor or licensed conveyancer). Once this has been processed a certificate is issued that can be used for Land Registry purposes.

Transactions of non-residential land are subject to the same rates of duty, although the zero-rate threshold is set at £150,000 rather than £60,000 (from 1 December 2003). In addition property transactions (both residential and commercial) in specified 'disadvantaged areas' qualify for relief.[8] Leases are charged a 1% rate of duty on the total 'net present value' of

8 http://www.inlandrevenue.gov.uk/so/relief.htm For some background on the introduction of this relief see, "Stamp duty : disadvantaged areas relief", SN/BT/2153, 9 May 2003.

rental payments, above the zero-rate threshold: this is £60,000 for residential property and £150,000 for non-residential. (Prior to the introduction of SDLT the tax charge on leases related to the length of the lease).[9]

Duty rates on transfers of land and property since 1958 are reproduced below:[10]

| Commencing Date | Threshold and rates of stamp duty | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Nil rate | 0.5% | 1 % | 1.5% | 2% | 2.5% | 3% | 3.5% | 4% |
| | Considerations up to | Considerations exceeding | | | | | | | |
| | £ | £ | £ | £ | £ | £ | £ | £ | £ |
| 1 August 1958 | 3,500 | 3,500 | 4,500 | 5,250 | 6,000 | – | – | – | – |
| 1 August 1963 | 4,500 | 4,500 | 6,000 | – | – | – | – | – | – |
| 1 August 1967 | 5,500 | 5,500 | 7,000 | – | – | – | – | – | – |
| 1 August 1972 | 10,000 | 10,000 | 15,000 | – | – | – | – | – | – |
| 1 May 1974[1] | 15,000 | 15,000 | 20,000 | 25,000 | 30,000 | – | – | – | – |
| 6 April 1980 | 20,000 | 20,000 | 25,000 | 30,000 | 35,000 | – | – | – | – |
| 22 March 1982 | 25,000 | 25,000 | 30,000 | 35,000 | 40,000 | – | – | – | – |
| 13 March 1984 | 30,000 | – | 30,000 | – | – | – | – | – | – |
| 20 December 1991 | 250,000 | – | 250,000 | – | – | – | – | – | – |
| 20 August 1992 | 30,000 | – | 30,000 | – | – | – | – | – | – |
| 16 March 1993 | 60,000 | – | 60,000 | – | – | – | – | – | – |
| 8 July 1997 | 60,000 | – | 60,000 | 250,000 | 500,000 | – | – | – | – |
| 17 March 1998 | 60,000 | – | 60,000 | – | 250,000 | | 500,000 | – | – |
| 16 March 1999 | 60,000 | – | 60,000 | | – | 250,000 | – | 500,000 | – |
| 28 March 2000[2] | 60,000 | – | 60,000 | – | – | – | 250,000 | – | 500,000 |

[1]Northern Ireland 1 August 1974
[2] The zero-rate threshold for non-residential transactions is £150,000 with effect from 1.12.2003.

The most recent increase in the rate of duty on normal house purchases was announced in the March 2000 Budget, when the duty rate was raised by a ½ percentage point for all sales above £250,000: sales between this threshold and £500,000 would be charged duty at 3% and sales above £500,000 would be charged duty at 4%.[11] No change was made to the nil rate £60,000 threshold, or to the 1% rate which applies to transfers between £60,000 and

9 A summary of current duty rates is at: http://www.inlandrevenue.gov.uk/so/current_sdlt_rates.htm

10 Adapted from: www.inlandrevenue.gov.uk/stats/stamp_duty/00ap_a9.htm. Duty rates since 1993 are set out in answer to a PQ: HC Deb 10 December 2002 c 266W.

11 HC Deb 21 March 2000 c 869. The new duty rates apply to transfers on or after 28 March 2000, except for transfers made in pursuance of a contract made on or before 21 March.

£250,000.[12] These changes were estimated to raise £290 million 2000-01, rising to £365 million in 2002-03, although only 5% of *residential* sales would be affected.[13]

Total receipts from stamp duty on land and property were £5,010 million in 2002-03, of which around £3,590 million accrued from residential property and £1,420 from commercial property and land. Receipts have increased substantially over recent years, from a level of £783 million in 1994-95. Over this period the share of the tax take from transactions in commercial property and land rose – from 34% in 1994-95 to 50% in 1998-99 – before falling back to 28% in 2002-03.[14] Unsurprisingly London and the South East contributes the largest share of stamp duty yields from residential transactions: £1,790 million in 2002-03.[15] It is anticipated that stamp taxes on land and property will raise £4.9 billion in 2003-04 rising to £6.2 billion in 2004-05.[16]

## B. Recent changes in the rates of duty

### 1. Budgets in 1997-1999

The rates of stamp duty have been increased four times since May 1997. In his first Budget following the General Election, the Chancellor - Gordon Brown - introduced the two higher rates of stamp duty - on properties over £250,000 in value. Mr Brown set out the reasons for this measure, and an associated cut in the rate of mortgage interest relief (MIRAS) in his Budget speech:

> For most people the acquisition of a house is the biggest single investment they will make. Homeowners rightly expect their investment to be protected by sensible policies pursued by Government. I am determined that as a country we never return to the instability, speculation, and negative equity that characterised the housing market in the 1980s and 1990s. Volatility is damaging both to the housing market and to the economy as a whole. So stability will be central to our policy to help homeowners. And we must be prepared to take the action necessary to secure it.
>
> I will not allow house prices to get out of control and put at risk the sustainability of the recovery. I have therefore decided it is right to take two measures aimed at stability in the housing market. First I will raise stamp duty from 1 per cent to 1.5 per cent on property sales above £250,000 and to 2 per cent for property sales above £500,000. This will take immediate effect after the Budget resolution has been voted by the House. Second, continuing the reforms begun by the previous Government which removed mortgage tax relief at the higher rate of 40 per cent in 1991, and cut it

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12 Inland Revenue Budget press notice REV5, 21 March 2000.

13 *Budget 2000* HC 346 March 2000 p 151; HM Treasury, *Notes on Clauses to the Finance Bill 2000 (clause 113)*, April 2000. The 0.5% rate of duty on transfers of shares was also unaffected.

14 In 1994-95 stamp duty receipts from land and property were £783 million of which £520 million was attributable to residential property.

15 *Inland Revenue National Statistics : Stamp Duties* www.inlandrevenue.gov.uk/stats/stamp_duty/menu.htm

16 HC Deb 29 March 2004 c 1236W

> to 15 per cent by 1995, I propose to reduce mortgage tax relief by a further 5 per cent from 15 per cent to 10 per cent from April 1998. The timing of my measure should help to avoid a return to the conditions of the 1980s where the failure to take early action guaranteed worse problems later on. I believe these measures will help to ensure a more balanced recovery.[17]

At the time it was estimated this measure would raise £240 million in 1997-98 rising to £540 million by 1999-2000. It was expected to affect 50,000 transactions, of which 30,000 would be residential, though 75 per cent of the yield would be from transactions in commercial property and land.[18] Legislation to this effect was included in the *Finance (No.2 ) Act 1997*.[19] At the time reaction to this change appears to have been quite muted.[20] The Chief Executive of the Halifax, Mike Blackburn, was quoted in the *Times* as saying, "the rate above £250,000 will not affect many and should not hit the market, except possibly in London."[21] The *Financial Times* reported a similar response to this change:

> Mortgage lenders, house-builders, estate agents, and commercial property developers expressed relief last night that stamp duty increases on property sales had not been higher … The Council of Mortgage Lenders said it was disappointed by the tax measures but that 'the overall Budget package constitutes a prudent set of measures.' Commercial property specialists were more concerned by stamp duty increases. It said that the increases would have more widespread impact on offices, shops and retail properties which usually command far higher prices than residential properties.
>
> Agents DTZ Debenham Thorpe said: 'The mainstream commercial market in the short term is strong enough to absorb this extra cost. 'Longer term, it will reduce liquidity in the sector inhibiting the ability of industry to take on new space.' Mr Angus McIntosh director of commercial property consultants Richard Ellis said the higher duty could threaten more marginal office and industrial schemes although the retail sector was likely to remain a strong market, particularly for out-of-town investments.[22]

In his March 1998 Budget the Chancellor proposed a second increase in stamp duty rates:

> I turn now to this year's Budget decision on mortgage tax relief. I can tell the House that I have decided in this Budget not to make any further change in the rate, or to make any change to stamp duty on property below £250,000. For property sales above £250,000, stamp duty will be raised to 2 per cent. from next Tuesday, and to 3 per cent. on property sales above half a million pounds--a change which leaves 98 per cent. of house transactions unaffected.[23]

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17 HC Deb 2 July 1997 c 313

18 Inland Revenue press notice, *Stamp duty*, 2 July 1997

19 Specifically section 49 of *Finance (No.2) Act 1997* This measure was not debated at any length when scrutinised at the Committee stage of the Finance Bill: SC Deb (A) 23 July 1997 c 508.

20 For example, "Increase in tax will not stamp out sales", *Times*, 3 July 1997

21 "Business verdict: bosses breathe a sigh of relief", *Times*, 3 July 1997

22 "Sigh of relief at property 'prudence'", *Financial Times*, 3 July 1997

23 HC Deb 17 March 1998 c 1110; Inland Revenue Budget press notice IR 23, 17 March 1998

The consensus in the housing market appears to have been that the change would not have a big impact on house sales,[24] though it sparked speculation that the Government might seek to bring stamp duty rates closer to those charged in other EU Member States - which, by and large, are a good deal higher than UK rates. During the proceedings of the Finance Bill in April 1998 the then Paymaster General, Geoffrey Robinson noted, “overall, stamp duty and its equivalents in the Community stand at between 6 per cent. and 10 per cent. on average, which still puts us at a considerable advantage.”[25]

The *Financial Times* quoted Will McKee, director general of the British Property Federation, as saying, “you will hear a variety of debate in the industry about whether a 3 per cent stamp duty is too much or not yet too much. But the real question is: where is the Chancellor going with stamp duty.”[26] *Investors Chronicle* quoted Steve Mallen, head of research at Knight Frank saying, “the shrewd investor should assume stamp duty will continue to rise towards continental levels and plan for that now rather than moan about it.”[27] A commentator writing in *The Tax Journal* noted, “stamp duty administration costs are as low as 2½p per £100 of tax collected; it is, therefore, extremely unlikely that the latest round of increases are final and the stamp duty target will undoubtedly be to raise rates to around 6 per cent on transactions. The question will therefore be whether the current threshold of £500,000 for the top rate remains, or whether there will be a higher threshold for the top rate.”[28]

These changes were debated on the floor of the House during the Committee stage of the Bill in April;[29] on this occasion the then Paymaster General, Geoffrey Robinson, noted that the Government believed that “at the present level the increase [in duty] will not markedly affect the market” and that, despite fears being voiced by a number of Conservative Members, that the change was not being driven by the wish to harmonise stamp duty rates across Member States.[30]

A third increase in duty rates – a ½ percentage point increase in the rates for property over £250,000 in value – was introduced in the March 1999 Budget.[31] In addition the Chancellor announced that mortgage interest relief – restricted to 10 per cent from April 1998 – would be abolished completely from April 2000.[32] The estimated yield from this change was £270 million in 1999-2000 rising to £340 million in 2001-02.[33] The majority of property transactions affected by the rate increase were commercial ones: estimates given at this time

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24 for example, “Housing market likely to weather increase” & “Disappointment over stamp duty rise”, *Financial Times*, 18 March 1998
25 HC Deb 27 April 1998 c 110.
26 “Concern at Brown’s turnover tax intentions”, *Financial Times*, 20 March 1998
27 “Brown stamps on property deals”, *Investors Chronicle*, 20 March 1998
28 “Whither stamp duties?”, *The Tax Journal*, 20 April 1998
29 HC Deb 27 April 1998 cc 99-116. The relevant legislation is set out in section 149 of the *Finance Act 1998.*
30 HC Deb 27 April 1998 c 111, c 116
31 HC Deb 9 March 1999 c 186
32 For details see “Mortgage interest relief (MIRAS)”, Library standard note SN/BT/1536, 28 June 2001.
33 Inland Revenue Budget press notice IR15, 9 March 1999. The relevant legislation is set out in section 111 of the *Finance Act 1999.*

show that the relative share of duty receipts from commercial transactions being much larger for transactions over £250,000 in value.[34]

Generally there seems to have been a limited response to these changes. The *Sunday Times* quoted one mortgage broker, Simon Tyler of Chase de Vere, as saying, "Most people will add the cost to their mortgage so I shouldn't think it will affect the property market too much. But it is disturbing to see how much stamp duty has increased during the past few years."[35] The *Guardian* noted that the preponderance of properties over £250,000 would be in London and the South East.[36] At the Committee stage of the Finance Bill that year this provision was debated on the floor of the House, when the Opposition drew attention to the impact this change would have on business property. Part of John Whittingdale's speech on this occasion is reproduced below:

> According to the Government's figures, of all transactions over £250,000, 65 per cent. of the receipts from stamp duty come from commercial property and land transactions. For transactions over £500,000, 80 per cent. of receipts come from commercial property and land transactions ... This is overwhelmingly a business tax and businesses will have to pay the majority of the extra £270 million that the increases will raise…
>
> Last year, several organisations representing the commercial property industry commissioned independent research by Arthur Andersen and the London business school on the impact of increased stamp duty rates on the commercial property sector … the analysis … revealed that there is a multiplier effect and that changes in the level of stamp duty have a disproportionate impact on commercial property prices … That is particularly serious as many industrial and commercial companies use the value of their commercial property assets as collateral for debt finance … a significant drop in commercial property values is likely to have a measurable effect on the ability of firms to raise loan finance. That may be particularly significant for small and medium-sized enterprises.[37]

In response the then Financial Secretary Barbara Roche argued that the healthy condition of the commercial sector suggested the Opposition's concerns were unnecessary:

> The commercial sector of the property market is in sound condition and should be well able to absorb these small increases without serious difficulties … According to the Investment Property Databank, the commercial property market has been strengthening in 1999. Returns from investment in property over the past three years--at 9.4 per cent. a year, adjusted for inflation--have been considerably better than the long-term average of 5.9 per cent. since 1986. Stamp duty is only one of the

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34 Commercial property and land transactions accounted for an estimated 20% of duty receipts for transactions between £250,00 and £500,00 – but 80% of receipts for transactions over £500,000 (HC Deb 30 March 1999 cc 668-670W).

35 "Homebuyers are hit by a double blow", 14 March 1999

36 "Homing in on the buyers", 13 March 1999

37 HC Deb 28 April 1999 cc 406-407

considerations involved in buying or leasing property; other economic factors, such as long-term interest rates and increases in capital values, are much more important.[38]

The Minister went on to oppose the suggestion made earlier in the debate that commercial property should be charged a separate rate of duty: "both residential and commercial property deals will face exactly the same tax rate, which is why [the tax structure] is fair."[39] The issue was raised in a Lords PQ in February 2001:

**Lord Oakeshott of Seagrove Bay** asked Her Majesty's Government: Why the rates of stamp duty on the purchase of residential and commercial property are identical; and Whether the same economic and fiscal arguments apply to changes in the rate of stamp duty on residential property, particularly houses costing over £500,000, as on commercial property; and What practical difficulties of duty assessment or collection would follow a decision to levy stamp duty at different rates on residential and commercial property.

**Lord McIntosh of Haringey:** The stamp duty charge on transfers of land and buildings does not depend on the use made of that property. This has always been the case. The Government examine all the economic and fiscal arguments that apply to residential and commercial property whenever they consider the appropriate rates for stamp duty on property. The administrative implications of introducing different rates would depend on the definitions of residential and commercial property and how the charge would apply to mixed-use properties.[40]

## 2. The 2000 Budget : 'slab' versus 'slice'

In the March 2000 Budget duty rates on properties over £250,000 were increased by a further ½ percentage point; details were given in a press notice:

**The new rates and thresholds**

Under the proposals the rates of duty on sales will be:

| | | |
|---|---|---|
| Up to £60,000 | - | nil |
| Over £60,000 up to £250,000 | - | 1 per cent |
| Over £250,000 up to £500,000 | - | 3 per cent |
| Over £500,000 | - | 4 per cent |

The rate of duty applies to the whole price paid. So for example a purchase at £170,000 will attract duty of £1,700, and a price of £300,000 will give rise to duty of £9,000.

**Leases** Stamp Duty on the assignment of an existing lease is charged in the same way as the transfer of a freehold. On the grant of a new lease, duty is charged separately on the premium (at the same rate as for a sale) and on the average annual

[38] HC Deb 28 April 1999 c 437
[39] HC Deb 28 April 1999 c 438
[40] HL Deb 12 February 2001 c 2WA

rent (under a scale of rates varying with the length of the term). The new rates will apply to lease premiums as they do for sales of freeholds. The separate scale of rates of duty on rent is unchanged. (But a technical defect in last year's Finance Act will be put right, as previously announced.)

**Increase in the threshold for short leases** To help both tenants and landlords it is proposed to increase from £500 to £5,000 the threshold for the Stamp Duty charge on the annual rent for new leases of up to seven years (or of indefinite term). So, where no lease premium is involved, tenants will not need to have such leases stamped, and landlords will not need to have the counterparts stamped.

**Other types of property** The new rate scale, like the old one, will apply to a range of transactions in property other than land and buildings, such as goodwill and some forms of debt. The rates of duty on transfers of shares and other securities (normally 0.5 per cent) are unchanged.

**Commencement** On the basis that the necessary Budget Resolution is passed by the House of Commons before 28 March, the new rates will generally apply to documents executed on or after 28 March. But the present rates will apply where the document gives effect to a contract made on or before 21 March, unless the document results from the exercise of an option, an assignment, or further contract made after 21 March. Where an agreement for lease has been made on or before 21 March, but the lease resulting from the agreement is not granted until 28 March or later, the present rates of duty will apply to both the agreement and the subsequent lease. (Any duty paid on the agreement is credited against the duty on the lease.)[41]

At the Committee stage of the Bill Conservative opposition focused on the impact on families – particularly in the south east of England – wishing to move house, and on the housing market as a whole; on this point Howard Flight said the following:

Who moves? Who wants to move? It is people who have to move because of their jobs. It is people who produce children and need larger houses. This is a tax on job mobility and yet another stealth tax on families. The measure causes more subtle damage. There are problems with potential over-building in the southern half of the country. Senior citizens are already often reluctant to move from the houses that they have lived in to smaller accommodation. That will discourage yet more such senior citizens from vacating larger family houses.

It is the increase in volatility that we are particularly concerned about. When the downturn comes and when the Chancellor realises that he has not abolished the economic cycle, the greater volatility will increase opportunities for negative equity in two ways. First, when there is a much higher tax on buyers and when the market is bad, buyers retreat. Secondly, many families will have used up their capital in paying significant amounts of stamp duty when buying their properties … In summary, this is another extremely cynical stealth tax that was designed purely to raise revenue. Its

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[41] Inland Revenue Budget press notice REV5, 21 March 2000. The relevant legislation is set out in section 114 of the *Finance Act 2000.*

> economic effects will be bad. They will be particularly damaging in the very areas that the Chancellor claims that he wants to improve.[42]

Speaking for the Liberal Democrats, Matthew Taylor argued that the structure of stamp duty should be reformed:

> The Government have not addressed the fact that stamp duty is an unusual tax in that different banded levels increase with the value of the transaction, yet the increases apply to the entire transaction. That leads to a simple form of avoidance in that people try to keep the price just below the relevant threshold. As the duty increases on transactions over £250,000, a difference of just £1 in the price of a property makes a difference of £5,000 on the tax that falls on the individual or company. As a result, people try to avoid tax, not always through legitimate means, such as by selling fixtures and fittings at an inflated price while reducing the notional price of the property.
>
> Research that I have undertaken through the Land Registry shows that as stamp duty has increased, there has been a decrease in the number of properties sold at just over £250,000 and an increase in the number sold at just under £250,000. The difference widens as the tax incentive increases … It cannot be right to have prices bunching just under the break levels so that purchasers avoid tax … That is not good for the Treasury or the tax system and it makes no proper sense.[43]

Following the March 2000 Budget the *Financial Times* reported that there was some evidence that the duty rate structure was having a distortionary effect on house prices:

> Michael Coogan, director-general of the Council of Mortgage Lenders, said: "Although the majority of house purchases will not be affected, raising stamp duty to higher levels inevitably leads to increased distortions in property prices. The higher stamp duty is raised, the greater the distortion it introduces to the market." Because the tax applies to the whole purchase price rather than the excess over each threshold, vendors are going to considerable lengths to make sure their property falls under the relevant threshold.
>
> Estate agents report complicated deals involving a purchase price at the threshold limit but excluding items such as carpets and curtains; a price for these is then negotiated separately. The CML had advocated a graduated structure to help mobility in lower-priced areas and minimise distortions. "The failure to tier the rates will continue the practice of 'carpets and curtains planning' and the chancellor has missed an opportunity to introduce a tiered rate structure," said Simon Philip, tax partner at consultants Arthur Andersen.[44]

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42 HC Deb 3 May 2000 c 261

43 HC Deb 3 May 2000 cc 261-2. In a paper published in September 1999 (*Reform of stamp duty*), the Chartered Institute of Taxation stated "we think that the present 'slab' scale of rates should be replaced by a 'slice' scale. It is iniquitous that a very small increase in consideration can lead to a very large increase in duty where it brings the total into a higher rate of duty."

44 "Stamp duty changes are 'missed opportunity'", *Financial Times*, 22 March 2000

In response to the debate the then Economic Secretary, Melaine Johnson, argued there was no evidence that the increases there had been in duty rates had affected either the residential or the commercial property market, and emphasised that the main purpose of the ½% increase in rates was to make the tax structure a fairer one:

> We should also consider how many people will pay stamp duty on residential transactions. The fact is that more than one third of transactions incur no stamp duty at all--they never have incurred stamp duty.[45] Moreover, 95 per cent. of sales will be completely unaffected by the Budget's provisions. Those are the facts that the House should consider. The hon. Gentleman gave us scarcely any facts in favour of his hypothesis. There is no evidence that the measures on stamp duty in this or earlier Budgets have had any effect on house prices or the number of transactions carried out in the residential property market. The same is true of commercial sales. We have a healthy commercial sector, which has enjoyed good growth. A large number of transactions take place and there is no evidence of any problem …
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> There is no evidence that a stamp duty increase of 0.5 per cent. reduces property values significantly, if at all. In fact, commercial property is not usually of primary importance as collateral, so on neither count is there evidence of a problem. It was suggested that the measure might have been taken to help stabilise the housing market. That is not its main purpose; its main purpose is to put in place a fair and progressive structure for stamp duty. Our macro-economic framework is the main measure to stabilise the housing market. That is working to the benefit of the economy, businesses and families--people right across the country are benefiting from our management of the economy.[46]

The Minister went on to question Matthew Taylor's argument for a 'slice' basis for duty:

> The hon. Member for Truro and St. Austell remarked on the way in which we might change to what is called a slice basis for stamp duty. The full-year cost would probably approach £1.5 billion, or more than a third of the current yield from the duty. Higher rates of duty would then be needed to maintain the yield …
>
> **Mr. Matthew Taylor:** I was talking about a revenue-neutral basis. The hon. Lady has suggested how that can be done. Is she aware that under the present system, before the Chancellor started to raise the differentials for more valuable property there was virtually no difference in the number of transactions just above and just below the £250,000 band. After the first increase, 139 properties were sold just under the £250,000 band for every 100 above it. Now, 151 are sold at just under £250,000 for every 100 above it ... there is clear evidence that we have created a system that favours the cheat over the honest person.

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[45] (The estimated number of residential sales in the UK under the £60,000 threshold was 660,000 in 1999-2000, "over two fifths of the total residential transactions": HC Deb 28 November 2000 c 589W.)

[46] HC Deb 3 May 2000 cc 263-4

> **Miss Johnson:** I cannot agree. There are different ways to structure stamp duty, but other methods, in particular the slice basis, cause problems of their own … The sort of problems that the hon. Gentleman describes are not apparent. We are still collecting the revenue that we have always expected to collect from stamp duty. Indeed, last year, we met the expected target for the collection of stamp duty revenues. The case that he put forward is not borne out by the facts … Stamp duty is an extremely efficient tax. The measures that we are introducing are giving a fairer and more progressive structure to the tax. There is no evidence that we need to change the basis for the duty on commercial or residential property, or indeed shares. It brings revenue into the Exchequer and we are, in fact, in a beneficial position.[47]

The impact of the duty structure on prices was raised in a PQ in February 2000 Budget:

> **Mr. Heathcoat-Amory:** To ask the Chancellor of the Exchequer (1) what evidence his Department has collected concerning the extent to which agreed property prices in London are banded at values just below the stamp duty thresholds; (2) what steps he is taking to prevent purchasers of property from avoiding stamp duty by schemes to apportion the purchase price between taxable and non-taxable items; (3) what evidence his Department has collected concerning property purchasers avoiding higher rates of stamp duty by apportioning the purchase price between taxable and non-taxable items.
>
> **Mr. Timms:** Only a very small proportion of property deals in London are agreed at amounts just below one of the stamp duty thresholds. Stamp duty is charged on a conveyance for sale of land and buildings. Where the total consideration for a sale includes non-dutiable items, such as chattels, the value of those items can properly be deducted from the total in order to calculate the amount to which ad valorem stamp duty applies.
>
> The Stamp Office examines documents presented for stamping as well as the associated Certificates of Value and other legal documentation and makes further inquiries where it is appropriate to do so. Adjustments to the tax charge are made in a handful of cases each year but there is no evidence of widespread overstatement of the value of non-dutiable items. It follows that there is no need for additional steps to counter avoidance or other abuse in relation to the apportionment of purchase prices.[48]

The Government reiterated its position in its consultation document on modernising stamp duty in April 2002, which led to the introduction of SDLT on 1 December 2003 (the document is discussed in detail below):

> The existing rate structure for stamp duty on property other than shares and securities encompasses three different rates and a zero rate band. It is a "slab" system, which means that where a transaction value crosses a rate threshold the new rate is applied

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[47] HC Deb 3 May 2000 cc 264-5
[48] HC Deb 21 February 2000 c 768W

> to the whole of the chargeable consideration. The Government intends to keep the existing rate structure for stamp duty.[49]

One part of this reform was the introduction of a new charge on leases calculated by reference to the total 'net present value' of rental payments. Following concern about the impact on businesses, the Government announced in October 2003 that the lease charge would use the 'slice' method. When the relevant regulations were debated in the House Mark Prisk asked the Financial Secretary, Ruth Kelly, if the Government would reconsider the way land transfers were charged duty:

> **Ruth Kelly:** ... During the consultation process, many commentators expressed the view that the slab structure, under which the whole amount of net present value comes into charge when the threshold has been exceeded, created distortions. I accept that and, for that reason, propose to change the structure so that only the excess over the threshold would be taxable. That will mean that every time that a lease is chargeable, the duty will be £1,500 less than it would be under the original proposals. The relief will be of particular benefit to small and medium-sized businesses and business start-ups.
>
> **Mr. Prisk:** Now that the Minister is to have a slice approach on business leases, will the Government do the same for residential properties?
>
> **Ruth Kelly:** We constantly keep the stamp duty system under review. The hon. Gentleman will appreciate that we have undertaken huge modernisation of the stamp duty regime, which Conservative Members avoided doing when they had the chance. I hope that he will give us credit for our action to date.[50]

## C. Modernising stamp duty on land and buildings

### 1. Budget 2002: consultation on a new stamp duty regime

In April 2002 the Government issued a consultation document on proposals to modernise stamp duty – and, in particular, to look at the use of certain corporate structures by both individuals and companies to avoid tax.[51] The consultation document summarised the anticipated impact of the reform:

> **Individual house-buyers** The new arrangements will be simpler for house-buyers and their agents. Transactions will still be reported to the Inland Revenue and stamp duty paid - at one of the network of regional stamp offices - after the purchase has been concluded. It will no longer be necessary, though, to send in legal documents at

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49 *Modernising stamp duty on land and buildings in the UK*, April 2002 paras 4.1-2. The issue was debated subsequently at the Committee stage of the Finance Bill 2003 (SC Deb (B) 5/10 June 2003 cc 391-2, 404-6).

50 HC Deb 12 November 2003 c 341

51 Inland Revenue, *Modernising stamp duty on land and buildings in the UK*, April 2002 An annex to the consultation document provides a good outline of the duty regime (*op.cit.* pp 33-34). At: www.inlandrevenue.gov.uk/consult_new/mod_stamp_duty.pdf

the time of payment. The Inland Revenue may subsequently examine a small proportion of domestic conveyancing transactions to ensure that stamp duty has been properly accounted for. In due course it will be possible to report and pay stamp duty electronically. In the longer term this will be via the electronic conveyancing systems to be introduced by the land registries. That will mean a single point of contact with Government to satisfy stamp duty obligations and to register a transaction. The land registries' electronic systems are likely to be introduced at different times in different parts of the UK over the next five years or so.

> **Commercial property** Procedures for commercial property transactions will be simplified in the same way with reporting and payment still made after the transaction has been concluded. Ending the submission of documents should be a welcome deregulatory initiative and remove concerns about the prompt and safe return of such documents. Electronic procedures will increase efficiency still further. Stopping the use of artificial arrangements to avoid stamp duty will make sure that everyone pays the tax on a fair basis. Measures to achieve this will require purchasers to report transactions as soon as any significant payment is made to satisfy a contractual obligation. Stamp duty will have to be paid at the same time. Further details and supporting documentation will need to be provided if the transaction is selected for enquiry by the Inland Revenue.[52]

The deadline for responses was 19 July 2002. At this time a number of anti-avoidance measures were also announced to "discourage a range of techniques currently used to avoid stamp duty on high-value property deals", and included in the Finance Bill that year.[53]

A press notice issued at the time summarised the features of the revised regime as follows:

> **Scope of the charge** The reformed stamp duty charge will apply to all transactions in respect of interests in UK land and buildings. So, as now, it will apply to purchases of freeholds and leaseholds over £60,000, and to certain new leases. The reform will not have any significant impact on either the stamp duty, or the main stamp duty reserve tax (SDRT), charge on shares. It is anticipated that all existing reliefs and provisions will be carried forward to the revised regime, unless they are no longer needed or could be exploited to undermine that regime. In particular, the stamp duty relief for land and property in disadvantaged areas … will be carried forward.[54]
>
> **New reliefs** The revised regime will not apply to:
>
> - transfers of, and agreements to transfer, goodwill. These will be exempted from stamp duty with effect from 23 April 2002. This change puts goodwill

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[52] *Modernising stamp duty on land and buildings in the UK*, April 2002 p 4

[53] Inland Revenue Budget press notice REV4, 17 April 2002. These were debated in Standing Committee of 18 June 2002 (SC Deb (F) cc 447-465), and now form ss 111-5 of the *Finance Act 2002*.

[54] (Provision to carry forward disadvantaged areas relief under the new regime is made in the *Finance Act 2003*: specifically, section 57 and schedule 6).

on a consistent footing with other intellectual property, and will bring immediate benefit to sales of UK businesses.[55] …

- transfers of debts. These will be removed from the scope of the modernised stamp duty regime with effect from late 2003 and will make it easier for companies to raise finance through debt factoring and the issue of bonds secured on debt portfolios.

**Tackling avoidance** A key objective of modernising is to stop avoidance and ensure that everyone pays their full share of the tax. Under the revised regime, a range of current avoidance techniques will be stopped. In particular, there will be specific rules to stop avoidance through the use of companies and non-corporate vehicles (such as trusts and partnerships), often known as "special purpose vehicles" or SPVs. Under the revised stamp duty regime, the Government proposes to create a charge triggered in certain circumstances by transfers of shares or interests in a limited range of property-owning vehicles. Broadly, the charge will be equivalent to the stamp duty that would be due if the land and buildings contained in the vehicle had been transferred directly to a new owner. The intention is to put the stamp duty treatment of property transfers by way of special vehicles on the same footing as transfers by way of sale.

The charge will apply to all qualifying transactions taking place after the introduction of the rules, including future transactions in vehicles already in existence, and regardless of whether they are registered inside or outside the UK. The precise scope of this charge, and the type of vehicles affected, will be the subject of detailed discussion in the summer as part of the wider consultation.

**Stamp duty on new leases** The Government also wishes to review the current stamp duty charge on the grant of new leases (known as "lease duty"). At present this charge does not always reflect modern commercial practice nor the value of the lease. The Government would welcome views on the best methodology for charging new leases, with the presumption that the revised charge will:

- correspond more closely to the stamp duty charge on a freehold transfer or lease assignment of a property of similar value;
- better reflect modern commercial practice; and
- discourage the use of leases to reduce the stamp duty charge on the sale of freehold property.[56]

At the moment stamp offices process 1.5 million residential conveyances and over 100,000 commercial documents each year. One key reason for reform is the plan to introduce paperless electronic systems for conveyancing and registration for UK land registries over the next few years. The consultation document proposed that the Revenue would implement a revised system for administering the duty first, before adapting that system to the various

[55] (Provision to exempt goodwill was made in section 116 of the *Finance Act 2002*. This was debated in Standing Committee on 18 June 2002: SC Deb (F) cc 465-6.)

[56] Inland Revenue Budget press notice REV4, 17 April 2002

land registry electronic systems as they came on-line. The two phases of this reform were summarised as follows:

> For the first phase, major reform of the legislation is necessary. This will be included in the 2003 Finance Bill. The first phase will be implemented by the end of that year. Under that system people will no longer be expected to send in the documents required at present. Instead, certain details will need to be provided and a standard form completed, accompanied by payment, within the required time limit. The Inland Revenue will work to provide these facilities electronically as soon as possible. For the vast majority of residential purchases the information and the tax will be due at exactly the same time as now – in other words, after completion of the transaction. Over the next 18 months or so, the Inland Revenue and the land registries will work together to devise an alternative to stamping that enables the land registries to determine quickly and reliably whether or not stamp duty has been paid on a document presented for registration.
>
> For the second phase, further changes will be needed to accommodate the introduction of land registry electronic conveyancing systems. The working assumptions are that use of an electronic conveyancing system will eliminate the need to notify the Inland Revenue separately that a chargeable transaction has occurred, and that payment of stamp duty will be made electronically via that system as a pre-requisite for registration. The land registries are undertaking various projects to establish electronic conveyancing systems. These will be piloted and probably embody phased implementation (for example, England and Wales are planning for the e-lodgement of deeds prior to the introduction of the full electronic conveyancing system). As a result a fully electronic stamp duty system is likely to be implemented at different times in different parts of the UK. Alongside electronic conveyancing, at least for some years to come, the expectation is that traditional, paper based conveyancing will continue. So stamp duty will need to continue to apply for those transactions too.[57]

Details about the e-conveyancing projects of UK land registries are available on their respective internet sites.[58]

A second theme underpinning reform was dealing with tax avoidance, particularly in the commercial sector. In its commentary on the 2002 Budget, the Institute for Fiscal Studies noted that "one obvious reason why avoidance activity may have become more significant in recent years is the rising rate of stamp duty on property transactions", given that a far greater proportion of commercial transactions are worth more than the higher rate duty threshold of £250,000. It went on to describe one method companies have used to avoid stamp duty:

> Avoidance of stamp duty is likely to be much easier for companies buying and selling commercial property than for individuals buying and selling houses. For instance, a

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57 *Modernising stamp duty on land and buildings in the UK*, April 2002 pp 10-11

58 HM Land Registry (which covers England and Wales) at: http://www.landreg.gov.uk/e-conveyancing/ and the Keeper of the Registers of Scotland at: http://www.ros.gov.uk/solicitor/artl.html

company could very easily transfer its property assets into a separate subsidiary and sell the shares in that subsidiary rather than selling the property directly. The shares purchased in the property subsidiary would be subject to the lower ½% rate of stamp duty on share transactions,[59] rather than the 3% or 4% charge if the property had been transferred directly. In economic terms, the two transactions are virtually indistinguishable, yet the stamp duty charge on one route is now up to eight times that on the other.[60]

This rate differential gives companies a strong incentive to structure transactions in such a way as to avoid the stamp duty charge on property. The additional costs of so doing (for example, legal fees and management time) reflect real resources that could otherwise be put to productive use. The government's proposed anti-avoidance rules may curtail some of the most blatant avoidance activity, but the rate differential is so large that there is a danger that they will lead companies to engage in more costly avoidance schemes, adding to compliance and administrative costs.

Transactions taxes are not a desirable type of tax in principle, since they raise the cost of reallocating resources to where they are put to the best use. However, if stamp duty on property is to be retained, one alternative approach that the government might consider is to draw a distinction between residential and other property transactions, and levy different rates of stamp duty on each.[61]

This might enable it to address the problem of avoidance on commercial property transactions more directly, as well as recognising the fact that commercial and residential property are already taxed differently. For instance, commercial property returns are generally subject to corporation or income tax, whereas the returns to owner-occupied housing are tax-exempt.[62]

The consultation paper set out how the new duty regime would treat SPVs:

Under the revised stamp duty regime, the Government proposes to create a charge triggered, in limited circumstances, by transfers of shares or interests in certain property owning vehicles. The charge would approximate to the stamp duty that would be due if the land and buildings contained in the vehicle had been transferred directly to a new owner. The intention is to put the stamp duty treatment of property transfers by way of special vehicles on the same footing as transfers of property by way of ordinary sale. The charge will apply to all qualifying transactions taking place

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[59] They would not be liable to any stamp duty if the company were registered overseas.

[60] [According to the consultation document there are "other, more complex variants of these schemes, and of the scope for using other corporate and non-corporate vehicles – such as trusts and partnerships– to achieve the same effects" *op.cit.* p 16.]

[61] This year's Finance Bill already contains a definition of non-residential property for the purposes of the stamp duty exemption for land in disadvantaged areas. [The provision is now contained in section 110 of the *Finance Act 2002*.]

[62] IFS, *Budget 2002: business taxation measures Briefing Note No 24*, May 2002 p 7. The use of 'special purpose vehicles' also received some limited attention in the press at this time ("Stamp duty loophole closing", *Financial Times*, 19 April 2002; "Tax loopholes on homes benefit the rich and cost UK millions" & "How the law works for the well-off and against ordinary owners", *Guardian*, 25 May 2002).

after the introduction of the rules, including future transactions in vehicles already in existence. The charge will apply to all qualifying vehicles, regardless of whether they are registered inside or outside the UK.

The precise scope and calculation of this charge, and the range of vehicles affected, will be the subject of detailed discussions as part of the consultation. But in outline, the charge is likely to apply to:

- the transfer of substantial interests (for example, acquisitions of shareholdings of 30% or more), in
- certain qualifying entities – including companies, partnerships and other (possibly non- UK) vehicles,
- whose major activity involves the ownership or exploitation of UK land and buildings, and
- whose assets consist primarily of interests in UK land and buildings (for example, at least 70% of total gross assets).

The purpose of including tests of this kind is to exclude from the revised charge transfers of shares in the majority of companies, partnerships and other entities, including companies carrying on a non-property based trade and companies that have a significant activity beyond the passive holding of property. The intention of detailed consultation is to identify precisely what tests and other conditions should be attached to the charge in order to ensure it achieves this goal - consistent with the Government's wider aim of protecting the tax base while minimising as far as possible any effects on commercial behaviour that is not tax driven. The rules for SPVs will be underpinned by the general enforcement provisions proposed for the revised stamp duty regime[63] … and by additional compliance provisions specific to SPVs. Again, these will be subject to detailed consultation.[64]

## 2. Responses to the consultation document

The first consultation period closed on 19 July 2002 though the Revenue continued discussions with interested parties. The reform generated considerable interest in the tax profession.[65] Following the Pre-Budget Report in November 2002 the Inland Revenue published draft legislation for the key provisions of the main charge on UK land and buildings, along with a summary of responses that had been received to the consultative document.[66] Comments were invited by 24 February 2003.[67] There had been almost 100 written responses, and some raised concern over the proposed new rules for SPVs set out above, "in particular that genuine commercial arrangements might be affected by the proposed changes. For example, a transfer of existing unit trusts into a funds structure (to aid

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63 (These proposals were set out in chapter 3 of the consultation document.)

64 Inland Revenue, *Modernising stamp duty on land and buildings in the UK*, April 2002 pp 16-17

65 for example, "Modernising stamp duty – a half-term report", *Tax Journal*, 3 February 2003; "Modern regime: I & II", *Taxation*, 20/27 February 2003; "Stamp duty land tax", *Tax Journal*, 19 May 2003; "Self assessment takes over stamp duty: I & II", *Taxation*, 5/12 June 2003.

66 Currently at: http://www.inlandrevenue.gov.uk/consult_new/responsedoc.pdf

67 The legislation was also discussed by a number of technical committees set up by the Revenue, in the course of the consultation process.

liquidity and choice)."[68] A wider concern appears to have been the proposals concerning lease duty. The Government's reasons for reforming the treatment of leases were given in the consultation document:

> The current structure and rates of the charge on the grant of new leases (sometimes referred to as "lease duty") are clearly out of step with the main stamp duty charge on conveyances. And, like the general legislative regime, current provisions are outdated and do not reflect modern commercial reality in the way leases are granted and used. The Government therefore believes that modernising stamp duty should include reform of lease duty. The objectives of a charge on the grant of new leases should be to:
>
> - correspond more closely to a stamp duty charge on a transfer of similar value, thus ensuring greater fairness between lessees and purchasers,
> - better reflect modern commercial practices, and
> - ensure that stamp duty on the sale or conveyance of property is not avoided merely by the creation and transfer of a lease.
>
> Lease duty can be calculated using three factors: the premium paid, the amount of the rent and the length of the lease. In general all three elements should be taken into account to ensure that the premium and rent are not manipulated to minimise the duty due, which might be done fairly easily, were only one or two elements brought into account. The existing lease duty is charged on both the premium and the rent, and is calculated as follows:

| **Premium** | |
|---|---|
| Up to £60,000 | Nil (Unless annual rent exceeds £600, where 1% applies) |
| £60,001 to £250,000 | 1% of premium |
| £250,001 to £500,000 | 3% of premium |
| More than £500,000 | 4% of premium |

| **Rent** term of the lease: | |
|---|---|
| 1 year and below | 1% of rent payable |
| Over 1 up to 7 years | 1% of average annual rent |
| Over 7 up to 35 years | 2% of average annual rent |
| Over 35 up to 100 years | 12% of average annual rent |
| More than 100 years | 24% of average annual rent |

> There are specific reliefs:
>
> - for all leases where the annual rent is less than £5,000 and the lease is for a period of less than 7 years no stamp duty is payable, and
> - for furnished property where the rent exceeds £5,000 and the lease is for period of less than one year only the fixed charge of £5 is payable.

The document went on to discuss the options for reform:

68 *Modernising stamp duty on land and buildings in the UK: draft legislation*, November 2002 p 62

Lease duty under the revised regime could replicate the existing system, possibly with different rates. However, this system does not ensure that leases with the same overall value are charged a similar amount. Nor that the charge for the same length and value lease is similar where the balance between premium and rent differs. These design defects are likely always to be present no matter what the actual level of rates and thresholds. Possible alternatives might include charging the value of the lease to the lessee, a formulaic approach, or an annual charge over the period of the lease.

The Government does not favour a valuation approach because the potential regulatory burden for lessees is likely to be very high. While the ability of companies to use the value recorded in accounts might lessen this impact a little, there are still difficult timing issues (accounts may not be prepared until some time after the lease duty payment falls due). There could also be a significant impact on Inland Revenue and Valuation Office Agency resources. Nor does the Government favour the imposition of an annual charge on the lease.

But a formulaic approach is worth exploring. One option would attempt some form of valuation of the lease based on the premium, rent and length of lease, as now. But rather than applying different rates dependent on the length of lease, the rates applicable to transfers or assignments would be applied to the result of the calculation.

Example: Using a simple approach, if there were a 10-year lease with a premium of £80,000 and rent of £20,000 then the lease value could be 80,000 + (10 x 20,000) = £280,000 giving rise to a stamp duty charge of £8,400 (i.e. £280,000 @ 3%).

This type of approach would factor in the view that a longer lease is worth more; moreover many shorter-term leases would fall out of the charge if their value did not reach threshold. But, because it ignores the time-value of money, it could have a penal impact on very long leases, unless some form of "discount" were built in. A more sophisticated formulaic option would be a net present value calculation. However, this would require the Inland Revenue to publish assumed interest rates periodically, which might result in a complex calculation. In addition it may create additional uncertainty if new interest rates have to be published from time to time.

Reviewing the rates and structure of lease duty may not be sufficient to bring in a regime which has more parity between leases and other transfers, and between premiums and rent payment options. There are certain ways a lease can be manipulated for which special rules might be required, for instance extending the length of a lease by adding years in which no rent is due in order to reduce the average annual rental. Repeated renewals and significant upward rent reviews within a short period may also require special rules. The Government recognises that any reform of lease duty may require significant changes to rates and structure. Possible rate structures for leases will be a key part of the consultation debate.[69]

As noted above, many respondents expressed concern about this proposal:

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[69] *Modernising stamp duty on land and buildings in the UK,* April 2002 pp 24-6

> A high proportion of written responses to the consultation document commented on the lease duty proposals, and about a sixth of all written responses were exclusively concerned with lease duty. Their responses covered the following:
> **taxing premiums** – the principle of taxing premiums on leases on the same basis as a transfer of freehold property was accepted by most respondents (i.e. using the slab system rates).
> **the slab system** – the shortcomings of the slab system itself has been questioned, especially the distortions around the thresholds.
> **the formulaic approach** – those that responded on this point strongly criticised the example of the formulaic approach provided in the consultative document as, for them, it produced substantial increases in the stamp duty payable.
> **rack rented leases** – the view that rack rent leases are liabilities rather than assets was emphasised.
> **leases being used as an avoidance technique** – many respondents stated that leases were not used as a mechanism to avoid stamp duty and that there was no real evidence of this being the case. The example of sale and leaseback agreements was given as a legitimate business arrangement in a number of responses.[70]

In January 2003 it was reported in the press that two of the committees overseeing consultation had seen meetings postponed, raising fears that the Government would ignore views about the proposed regime.[71] The issue arose on the second reading of the Finance Bill 2003, when the Chief Secretary to the Treasury, Paul Boateng, insisted that neither he nor the Paymaster General had – in the words of Mark Prisk MP – "instructed the Revenue … to end all consultations."[72]

## 3. Budget 2003

In his 2003 Budget speech the Chancellor announced the introduction of the new duty regime, which would include a new charge on leases – subject to further consultation:

> As a result of tax avoidance, only half of all commercial property transactions—worth £10 billion a year—are paying the stamp duty owed. As I announced in the last Budget, the Finance Bill will introduce new tax avoidance powers to close these loopholes. In addition, because tax avoidance and distortions could take the form of leasing, the Finance Bill will make provision to restructure the stamp duty currently paid on the rental value of all new leases, at a proposed rate of 1 per cent.—four times lower than the usual stamp duty rate on which we consulted.
>
> To provide time for further consultation with business and commerce on how to promote a more level playing field between leases and transfers, I propose to trigger this reform only on 1 December. I will only do so if, after consultation with the

70 *Modernising stamp duty on land and buildings in the UK: draft legislation*, November 2002 p 64
71 "Revenue calls off meetings on reform of stamp duty", *Financial Times*, 22 January 2003
72 HC Deb 6 May 2003 c 545. Howard Flight also raised the issue at this time (*op.cit.* c 551).

industry, there is no effective alternative for tackling avoidance. If I have to trigger the change, I will increase the exemption from stamp duty for commercial property from £60,000 to £150,000, and exempt leases up to £150,000. Therefore, in any event, there will be no duty on 60 per cent. of commercial rental contracts.[73]

An outline of the new regime was given in a press notice, issued at the time of the Finance Bill's publication:

> For the vast majority of individual house-buyers and their agents, transactions which are liable to stamp duty land tax should be reported and duty paid as now, within 30 days of completion. From 1 December 2003, when the new system starts, customers will no longer need to submit documents to the Inland Revenue for stamping. Instead they will have to notify liability to tax using the new land transaction return. Payment should be sent at the same time as the return, as now, to our central processing centre in Netherton. Any stamp office will be able to forward returns and payments to Netherton on behalf of customers, but customers will benefit from a quicker service if they make their returns direct to Netherton.
>
> In future, customers will receive a stamp duty land tax certificate which they or their agents will need to submit to land registries in order to register ownership of land or to record a deed, as appropriate. Under this 'process now, check later' system, the Inland Revenue will issue certificates from the central processing centre. From the filing date of the return, there will be an 'enquiry window' (the period during which the Inland Revenue can open an enquiry or a customer can request that an enquiry be opened into a transaction). This will be a period of nine months for all transactions.
>
> In the longer term, the introduction of electronic systems for conveyancing and registration by the land registries should allow stamp duty to be processed simultaneously with registration. There will be cases where no tax is due, for instance where a relief can be claimed or where the transaction is below the zero rate band threshold.
>
> It is proposed the threshold will be £60,000 for residential property and £150,000 in other cases. In these cases purchasers may still have to make a return to the Inland Revenue or, in certain cases, provide a self-certificate to the land registries (which includes any register maintained by the Keeper of Registers of Scotland and, in Northern Ireland, the Land Register of Northern Ireland and the Registry of Deeds).[74]

Details of the new charge on leases were given in a Budget press notice:

> **Stamp duty on new leases** Under the modernised regime, the Government also proposes to update the existing charge on the grant of new leases (known as "lease duty") to bring it closer into line with the charge on transfers of freehold land and

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[73] HC Deb 9 April 2003 c 279. The Chancellor also announced at this time that the rates of stamp duty on homes and business property purchases would be frozen.

[74] Inland Revenue press notice REV55/03, 16 April 2003

> buildings. Legislation to achieve this will be included in the Finance Bill and the changes will have effect from 1 December, subject to further consultation.
>
> At present the charge is calculated by reference to lease length and the average annual rent, with four different rates applying. This approach does not properly reflect the value of the lease over time, and creates distortions, particularly around the points where rates change.
>
> Under the proposals, the new charge will follow modern commercial practice in valuing the rent payable over the term of the lease at its discounted net present value (NPV) and there will be a single rate of 1 per cent of the NPV of rental payments, where the NPV exceeds the zero rate band threshold of £60,000 (for residential property) or £150,000 (for non-residential property). Premiums will continue to be taxed as now at the same rates as freehold transfers. This will reduce the tax distortion between holding property as leasehold and as freehold, and between different types of leases. In addition, from 1 December 2003, VAT will be excluded from treatment as consideration for a new lease provided the landlord has not opted to charge VAT by the time the lease is granted. Under the current regime, lease duty is calculated on the assumption that VAT is charged on rent, unless the lease specifically prohibits the charging of VAT.
>
> **Threshold for non-residential property** The Budget introduces a measure designed to exclude more small businesses from charge to stamp duty from 1 December 2003. The stamp duty zero rate band threshold will be significantly increased from £60,000 to £150,000 for non-residential purchases, eliminating the charge on around 18 per cent of commercial property acquisitions. The new zero rate threshold will apply to non-residential new leases where the NPV of rents is not more than £150,000, taking around 60 per cent of new commercial leases out of charge altogether.[75]

Consultation would continue on a certain key aspects of the regime: specifically, the transfer of land into and out of a partnership by a partner, and the transfer of interests in partnerships that hold UK land; the approach to large developments, including the treatment of subsales and successive transfers; sale and leaseback deals and securitisation of land.[76]

The reformed tax charge on leases has proved the most controversial aspect of this reform,[77] and several Members raised concerns about its potential impact at the second reading of the Finance Bill on 6 May 2003.[78] On this occasion the Paymaster General Dawn Primarolo, set out the Government's position as follows:

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75 HM Treasury Budget press notice PN05, 9 April 2003

76 Inland Revenue press notice REV55/03, 16 April 2003

77 for example, "Lease stamp duty rise poses threat to occupiers", *Financial Times*, 10 April 2003; CBI press notice, *CBI reaction to the Budget*, 10 April 2003.

78 for example by Howard Flight MP (HC Deb 6 May 2003 c 551), Mark Simmonds MP (*op.cit.* c 602), and Stephen O'Brien MP (*op.cit.* cc 624-5).

> Matters that affect stamp duty are twofold. The first set covers avoidance on commercial property transactions. Half all large commercial transactions are worth more than £10 million and pay 4 per cent. on property purchases, whereas the other half pay nothing by using a variety of complex avoidance techniques. That is clearly unfair and I cannot understand why hon. Members believe that the position should be allowed to persist. We are modernising the tax, making it e-compatible and introducing modern enforcement mechanisms to close the loopholes.
>
> The second set of issues involves stamp duty on new leasehold transactions. The current tax is based on upfront payments for a lease, paid at 4 per cent. and a payment based on an average annual rent. It is highly distorting and there are large cliff edges. It does not work properly and there is no level playing field. The proposals in the measure tackle all those matters and provide for further consultation about dealing with the avoidance mechanism.
>
> … We make no apology for tackling the use of corporate wrappers to avoid the charge. Almost £500 million of tax a year is avoided. That cannot be fair to taxpayers who pay their taxes. The lease duty reform tackles the differential in tax charge between freehold and leasehold, which has an unsustainable driver of tax-distorting business. The proposals in the Bill make it clear that, on consultation, if a better way of dealing with the distortions is produced, the Government will consider it.[79]

The Minister went on to refer to help provided small businesses through the proposed exempt threshold for commercial leases. Some details of this are given in the partial regulatory impact assessment, published at the time of the Budget:

> Under the proposals, the [lease] 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.
>
> 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. …
>
> As explained … 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

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[79] HC Deb 6 May 2003 c 630

> £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. 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.[80]

The procedure for consultation on lease duty was set out in a written answer:

> **Mr. Howard:** To ask the Chancellor of the Exchequer if he will make a statement on the further consultations he is to have with business concerning stamp duty on lease contracts, as referred to in paragraph 5.90 of the 2003 Budget (HC 500).
>
> **Ruth Kelly:** The lease duty consultation after Budget 2002 was very helpful in informing the proposed new lease duty structure, which incorporates many consultees' views. The Chancellor announced in Budget 2003 that he is happy for further consultation to take place on the proposed new structure. In order to facilitate this, a time-limited regulatory power has been incorporated in Finance Bill 2003 to allow a suitable alternative proposal to be put in place for the implementation of Stamp Duty Land Tax in December 2003. However, any alternative will only replace the current proposals if it can be shown to be a better way of achieving the same objectives. The Inland Revenue will convene further discussions shortly with representative organisations and with businesses who have expressed a particular interest in the proposals.[81]

In their report on the 2003 Budget the Treasury Committee made some observations on this reform:

> The Committee notes that tax avoidance in the property market is an important issue for the authorities to address. We recommend that the proposed consultation process focusing on the reform of the stamp duty treatment of commercial leases should be allied to a wider ranging review of the taxation of commercial property transactions. In this context we note the current consultation on stamp duty and await its outcome with interest.[82]

In their report on the 2003 Finance Bill the Lords Select Committee on Economic Affairs were also concerned about the consultation process, stating that "the Government should carry out a review in the Autumn of this year to assess whether there is sufficient time for the task to be properly completed by 1 December 2003."[83]

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80 *Partial regulatory impact assessment: Modernising stamp duty*, 16 April 2003 paras 59-60, 69-72. This is available at: http://www.inlandrevenue.gov.uk/ria/stamp_duty.pdf A full assessment is to be published when the new tax is implemented (HC Deb 3 June 2003 cc 199-200W).

81 HC Deb 8 May 2003 c 802W

82 *Seventh report: the 2003 Budget*, 16 May 2003 HC 652 2002-03 para 57

83 *Third report: Finance Bill 2003*, 17 June 2003 HL 121 2002-03 para 4.60

The main provisions in the Bill relating to the charge on leases were considered by the Committee of the Whole House on 13 May 2003, though they were voted on without debate.[84] The issue was raised at the Report stage when, in opposing amendments moved by the Opposition to delay the implementation, the Chief Secretary to the Treasury, Paul Boateng, took the opportunity to set out the Government's position in a little detail:

> Stamp duty payable on the rental element of leases, which is often called lease duty, has long been out of step with the duty payable on purchases, and the existing structure of lease duty distorts commercial decision making. The current charge is on just one year's rent, at rates that vary according to the length of the lease. A lease of 35 years is charged at 2 per cent., whereas one of 36 years is charged at 12 per cent. The Government believe that the decision to own a property leasehold or freehold, or on what type of lease to take, should be business led, not tax led.
>
> After extensive consultation, we now propose a new lease duty structure to reduce such distortions while securing a fair amount of tax from those transactions. The Government are still open to comment on the proposals. My officials have recently had positive and constructive meetings with interested parties. We are perfectly prepared to consider an alternative structure that meets the Government's objectives equally well. Under the proposals, lease duty will, as now, be a one-off, up-front charge on rents, but based instead on the value of the lease over its term, using total rent discounted to net present value. That approach surely better captures the value of a lease to the lessee and reflects modern commercial practice in the treatment of future payments.
>
> The £150,000 zero rate threshold for purchases will apply equally to the value of rents on commercial leases, so that leases where the net present value of rent over the term is less than £150,000 will be exempt. That will take 60 per cent. of all commercial leases out of the charge completely; and businesses that do pay more under the proposals will pay at a flat rate of 1 per cent., which is still considerably less than the 4 per cent. on an equivalent purchase. That decision was welcomed by the industry.
>
> The structure narrows the gap between charges on leasehold and freehold transactions without imposing an unfair burden on large businesses, and removes the burden completely for smaller leases such as those typically used by small businesses and start-ups, where help is most needed and where this Government have done much to assist. Most residential rental leases are currently liable to lease duty, but under the proposals the vast majority will fall below the £60,000 threshold. A small number of residential leases, about 5,000 per year, will be liable—broadly those with the very highest rents. The proposals thus reflect the Government's commitment to fairness, to encouraging enterprise and to reducing regulatory burdens.[85]

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84 specifically clause 56 and schedule 5 of the Bill (HC Deb 13 May 2003 c 274). This was due to the length of earlier debates eclipsing the time remaining under the programme motion agreed for that day's business.

85 HC Deb 1 July 2003 cc 279-280

## 4. Further amendments to the regime: autumn 2003

On 20 October 2003 the Government announced the results of its consultation, in a long Ministerial statement and a press notice. In introducing these changes Ruth Kelly, the Financial Secretary said,

> "The proposals announced today, along with those announced in Budget 2003, will help to achieve the Government's aim of a modern, efficient, system of taxing land transactions which promotes fairness between taxpayers, reduces distortions and prevents avoidance. I am also pleased that our proposals, which follow extensive and valuable consultation with interested parties, will be of particular help to small and medium-sized enterprises and business start-ups."[86]

The Minister's written statement is reproduced in full below:

**Stamp Duty Land Tax**

**The Financial Secretary to the Treasury (Ruth Kelly):** I am pleased to announce the next steps in the process of modernising stamp duty on land transactions. These include:

A significant change to the proposed charge on the rental element when a new lease is granted ("lease duty"), reducing tax bills by £1500 per lease on commercial transactions (£600 per lease on residential transactions), which will be of significant benefit to smaller businesses

A new relief for businesses raising finance through the sale and leaseback of their land and buildings and relief for "chain-breaking" and similar companies which help to ensure an active housing market

Further consultation on how the new regime might apply to partnerships.

The announcement follows extensive consultation on the process throughout the earlier part of this year. These proposals along with those announced in Budget 2003, will help to achieve the Government's aim of a modern, efficient, system of taxing land transactions which promotes fairness between taxpayers, reduces distortions and prevents avoidance. I am also pleased that our proposals, which follow extensive and valuable consultation with interested parties, will be of particular help to small and medium-sized enterprises and business start-ups. The Inland Revenue is today publishing a news release, supplemented by a technical note, giving details of the proposed changes. I will be laying regulations to give effect to the changes before the House shortly. The Inland Revenue is also publishing for consultation draft clauses on the Stamp Duty Land tax treatment of partnership transactions.

The Government's proposals on lease duty follow extensive consultation over the last 18 months. I am extremely grateful to all who participated in the consultation process.

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[86] Inland Revenue press notice, *Modernising stamp duty on land transactions*, 20 October 2003 http://www.gnn.gov.uk/gnn/national.nsf/IR/3CD16480966EEF5580256DC500554F10?opendocument

A good deal of valuable information and data was provided by participants and some important work was done in partnership. Throughout the consultation process the Government has been particularly keen to have regard to the effect of any new structure on small and medium-sized enterprises and business start-ups.

Having considered all the contributions made I now propose to modify the structure contained in the Finance Act 2003, by way of regulations under section 112 of that Act, as follows:

The Finance Act charges Stamp Duty Land Tax on the "Net Present Value" ("NPV") of rent payable under a lease. NPV sums the discounted values of the rents. This discount recognises that future rent payments will be of less value. The Government believe that NPV represents a fair way of assessing the amount on which Stamp Duty Land Tax should be charged and proposes to retain it.

The Finance Act sets a threshold of £150,000 for commercial leases, £60,000 for residential leases. If the NPV does not exceed the threshold no Stamp Duty Land Tax is charged on the rental element. These thresholds mean that 60 per cent. of commercial leases and 90 per cent. of residential leases will pay no Stamp Duty Land Tax on the rental element. The Government believe these thresholds are fair and intend to retain them

The Finance Act provides that once the threshold is exceeded Stamp Duty Land Tax is charged at 1 per cent. of the full amount of the NPV. The Government propose to modify this so that Stamp Duty Land Tax is charged at 1 per cent. of the excess over the threshold. This means that on any commercial lease chargeable to Stamp Duty Land Tax the tax payable will be £1,500 less than under the Finance Act provisions.

Example

A lease for 18 years at an annual rent of £15,000 will have an NPV of £197,845. Under the Finance Act provisions Stamp Duty Land Tax of £1,978 would be payable. Under the Government's proposals only £478 will be payable.

I also propose to clarify the Stamp Duty Land Tax treatment of leases with uncertain rents, so as to avoid an undue compliance burden on tenants, and to provide that rent increases more than five years after the start of a lease are ignored. I also propose (by way of regulations made under section 109 of the Finance Act 2003) to widen the reliefs in sections 58 and 59 of that Act to include companies who help to ensure an active housing market, by "chain-breaking" (buying property when a prospective sale falls through) and by buying houses from the personal representatives of people who have died. I also propose to give relief for sale and lease-back transactions (where a company raises finance by selling a property for a capital sum and leasing it back at an annual rent).

In his Budget statement my right hon. Friend the Chancellor of the Exchequer announced that certain transactions involving partnerships would remain within the existing stamp duty regime until at least 2004 to give time for further consultation. These are: transactions between a partnership and an incoming partner, changes in partnership interests and transactions between a partnership and a departing partner.

> The Inland Revenue is today publishing draft clauses which bring these transactions, so far as they involve dealings in land, within the scope of Stamp Duty Land Tax. As with the Government's other proposals the aim is to give fairness between taxpayers, reduce distortions and prevent avoidance. My officials will be meeting interested parties to discuss these proposals but would welcome comments from others. The Government's intention is that the clauses will be included in the Finance Bill 2004 and will take effect from the date of royal assent to that Bill 2004.[87]

The business community's response was not positive, as the *Financial Times* reported:

> Business leaders have criticised the government for producing "hugely disappointing" modifications to the stamp duty rules to be introduced in December. Ruth Kelly, financial secretary to the Treasury, said the changes, which will lead to £1,500 lower lease duty bills, would be "of significant benefit to small business", but business leaders complained that many companies would still face "an eight-fold increase" in stamp duty on new leases …
>
> The reform will reduce revenue to the Treasury, but ministers still expect to collect 90 per cent of the additional revenue generated from the original tax increase. Lease duty raised £50m last year and, after the reforms, the Treasury expects to collect £230m … Bill Moyes, director-general of the British Retail Consortium, said: "It is a huge disappointment that the chancellor has not implemented a proper reform." The change would curtail the expansion plans of large and small retailers alike. Digby Jones, the director-general of the CBI employers' group, said: "It's extremely disappointing that the government, in its inexorable search for new areas to tax, is targeting the one sector that has kept the economy afloat: the high street." … Tax experts criticised the proposals. Steven McGrady, a tax partner at KPMG, said: "A company signing a 20-year lease for £100,000 a year would have paid £2,000 under the old stamp duty system. It would have been charged £14,212 under the Treasury's original £12,712."[88]

Official statistics suggested that these changes, combined with the increase in thresholds, would leave relatively few businesses worse off:

> As a result of the increases in the thresholds for commercial and residential leases, from 1 December 2003, 87 per cent. of leases will pay no Stamp Duty Land Tax (compared with 15 per cent. who were exempt under stamp duty) and a further 2 per cent. will pay less Stamp Duty Land Tax than they would have paid stamp duty. As a result of the changes, only 11 per cent. of leases will pay more Stamp Duty Land Tax than they would have paid stamp duty …
>
> Overall for commercial leases, the increase in the threshold from £60,000 to £150,000 will exempt 53 per cent. of the leases which would have paid stamp duty (in addition to the 9 per cent. of leases which currently pay no stamp duty) and the introduction of the 'slice' system will reduce the duty payable on another 5 per cent. of leases from

87 HC Deb 20 October 2003 cc 27-30WS

88 "Business chiefs 'disappointed' at rethink over tax on leases", *Financial Times*, 21 October 2003

> that due under stamp duty. It is accepted that different sectors will be affected differently, according to the sectoral distribution of lease lengths and rentals. The percentage of leases in particular sectors which are newly exempt or will pay less under SDLT are highly sensitive to these factors.[89]

Nevertheless the reform continued to be controversial, as many businesses in the retail trade argued that their own tax liability stood to increase substantially.[90]

Although the new regime did not amend the rates of duty on an individual's purchase of a house, some commentators – including the Association of Certified Chartered Accountants – were concerned that the new compliance regime might be a significant burden on taxpayers:

> The current stamp duty system is process-driven, whereby stamp duty is charged automatically as part of the set documentation which must be completed when buying a house. From 1 December 2003, however, this system will be replaced by SDLT, which will not be triggered by the execution of a document. Instead, tax will become payable automatically 30 days after the date that the purchaser acquires the property or land.
>
> Chas Roy-Chowdhury, ACCA Head of Taxation, said: "Our biggest concern is that the new system places the onus on the purchaser to notify the Stamp Office, rather than the Stamp Duty just being applied automatically as part of the process, in the way people are accustomed to. The individual will have to make a land transaction return, together with a self-assessment of the tax due. If they get it wrong, or are late with their notification, then they will suffer penalties and interest."
>
> As SDLT will be part of the self-assessment regime, it will also be subject to audit by the Inland Revenue, which will be operating a "process now, check later system", allowing it to open enquiries into transactions within nine months of the date returns are due or received. If the taxman suspects that house purchasers have deliberately dipped under a stamp duty threshold, alarm bells will ring and higher tax bills will be levied. Chas Roy-Chowdhury warned : "The deals most likely to be investigated by the Revenue are those properties around the stamp duty thresholds - £250,000 and £500,000. As things currently stand, a home buyer who purchases a property for £245,000 and pays separately for fixtures and fittings (chattels) to the value of just over £5,000 will have to pay stamp duty at the rate of one percent (£2450). Subject to investigation under the new system, however, the amount he or she paid for fixtures and fittings may well be reclassified as part of the property, which would push them into the next stamp duty bracket of 3%. This would mean a tax bill of £7,500 - a small matter of £5,050 more tax …
>
> "The whole stamp duty system needs a root and branch revamp. It creates needless distortions in the market. For a start, with today's high property prices, it is hardly

89 HC Deb 3 November 2003 c 459W

90 "Businesses cry foul at change of rule" & "Companies face large rise in stamp duty bills", *Financial Times*, 15 November 2003

unusual for houses to be worth more than £250,000. But more importantly, why should a £250,000 deal be subject to 1% tax while a £250,001 purchase incurs a 3% charge on the whole amount? Surely it would be more logical to follow the income tax system whereby the higher tax rate applies only to the income earned ABOVE the threshold, not on all the income. A house costing £290,000 should only be charged a 3% rate of stamp duty on the difference, ie £40,000, not the whole amount. The current system is illogical and disproportionate."[91]

ACCA's concerns were reported in the press at the time; an extract from a piece appearing in the *Telegraph* is given below:

> Homebuyers will have to fill in lengthy self-assessment forms to pay stamp duty from December 1 as the Inland Revenue seeks to boost its income from property taxes … At present, many people reduce the tax they pay by agreeing a price for the house below the threshold and paying an extra sum for fixtures and fittings … However, the Revenue is set to crack down on this type of avoidance when the legislation comes in six weeks' time … Provided the amount you pay for fixtures and fittings is a reasonable market value, said Steven McGrady, partner in the KPMG Stamp Taxes Group, you should have no problem. But the temptation is to offer more on fixtures and fittings so that the seller gets the same "price" for the sale, while the buyer reduces their tax liability. It is understandable, as the difference in stamp duty payable is significant. Chas Roy-Chowdhury of the ACCA said: … "If the taxman suspects that house purchasers have deliberately dipped under a stamp duty threshold, alarm bells will ring."
>
> What comes under "fixtures" and what are considered "fittings" is the important question. Michael Thomas, a barrister at Gray's Inn Tax Chambers, and author of a book on stamp duty land tax, said: "The Revenue generally accepts that carpets and curtains are chattels, which are exempt from stamp duty if they pass by delivery. Fitted kitchens and central heating systems are fixtures which pass with the land and the part of the price attributable to them remains chargeable to duty." [92]

Regulations implementing the new regime were debated and approved on 12 November 2003.[93] Both Conservative and Liberal Democrat Members were critical of these changes. Leading for the Opposition Mark Prisk said:

> We were told that fairness would be at [the] heart [of this reform]. Sadly, those laudable aims have gradually been replaced by the one overwhelming and desperate need of this Government—to collect the maximum amount of tax revenue to fill the black hole in their finances. As Bill Moyes, director general of the British Retail Consortium, put it only today: "The Treasury claim—that they are tackling avoidance—is a red herring. This latest tax is a bid to refill the Treasury coffers, by

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91 ACCA press notice, *Home buyers facing increased tax bills following stamp duty changes*, 18 October 2003

92 "Revenue to stamp on duty loophole", *Daily Telegraph*, 18 October 2003; see also, "House buyers set for doorstep checks by Revenue inspectors", *Financial Times*, 15 November 2003

93 SI 2003/2816 & SI 2003/2914. see, HC Deb 12 November 2003 cc 337-378.

milking the only sector that has refused to be beaten by the burgeoning weight of tax and regulation." How right he is.[94]

Mr Prisk was also strongly critical of the use of regulations to introduce the second round of reform (rather than primary legislation) and the 'speed' at which they had been brought forward, suggesting that the consultation exercise had been carried out in bad faith. Speaking for the Liberal Democrats David Laws focused on the impact that the new lease charge would have on certain sectors:

> The impact of the measures will be especially acute in those sectors where there are long leaseholds. Obviously, that is relatively common in the leisure sector, where there are leases of between 20 and 25 years due to the high cost of investment in leisure properties and the need to refurbish them regularly. For that reason, there is concern about the unfairness embedded in the measures. The tax increases will fall especially hard on some sectors and the Financial Secretary seems to have done nothing to address that concern.[95]

In response to the debate the Financial Secretary Ruth Kelly argued that the new method for calculating the tax charge on leases marked a significant improvement:

> The distortions apparent in stamp duty, where the rate of duty is increased at eight and 36 years, are not a feature of stamp duty land tax. The tax is charged at a flat rate of 1 per cent. of the net present value over the relevant threshold. A business takes into account the economics of the transaction when it enters into it. Stamp duty land tax places a value on the benefit received by a business entering into a lease transaction using lease length and rental payments as determining factors. That is no different from modern valuation and accounting practice. For example, the International Accounting Board is to recommend that all leases are shown as assets on the balance sheets of companies that have them. Stamp duty land tax uses a method to calculate that value, then applies a tax rate to it.
>
> The proposed structure for taxing lease rentals is more in line with the structure for taxing freeholds, but it acknowledges that leases are not the same as freeholds because the rate is set at a flat 1 per cent. instead of being dependent on value. That contrasts with the old stamp duty regime, which it replaces. It determined tax rate by the term of a lease. To assist smaller businesses and start-ups, the new regime taxes only the excess value over the appropriate threshold.[96]

Among the points the Minister addressed in her remarks was the concern, raised by Mark Prisk, that businesses would find the net present value calculation underpinning the new charge too complex:

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[94] HC Deb 12 November 2003 c 346
[95] *op.cit.* c 354
[96] *op.cit.* cc 367-8

> The hon. Member for Hertford and Stortford … mentioned the complexity of the formula, and we will of course be providing an online calculator. For those firms that do not have access to that, the Inland Revenue will be perfectly willing to help anyone who phones in and asks for the calculation to be made on their behalf.[97]

There have been reports recently that businesses have compliance with the new regime quite onerous:

> Gordon Brown's new stamp duty regime is discouraging investment in commercial property by wrapping up business in more red tape, a business survey suggests today. That could slow the market and increase inefficiency, according to KPMG, the professional services firm. Almost two-thirds (64 per cent) of 100 businesses with annual turnover of £5m-£500m said property investment had become less appealing, according to the survey by Continental Research for KPMG. More than half (52 per cent) said the stamp duty land tax would mean a fall in the volume of property transactions. "The stamp duty land tax will mean that the cost base of performing some property transactions, particularly those involving leases, will increase," said Jonathan Thompson, head of real estate at KPMG.[98]

Concerns about the operation of SDLT were raised in an adjournment debate in Westminster Hall in January 2004.[99] Initiating the debate Angela Watkinson made a series of complaints, focusing on the higher tax burden imposed on longer business leases, the extra demands made by the new land transaction return and certain administrative delays in the first weeks of the new system. In response to the debate, the Paymaster General, Dawn Primarolo, conceded that there had been problems in the first weeks of the new tax,[100] though she argued that the procedures for making returns were not unduly complex:

> The hon. Member for Upminster … said that the six-page form, plus the supplementaries, is a backward step. Moving away from stamping documents is a necessary first step to e-conveyancing. It is impossible to send documents down the internet. Little additional information has been requested. The national insurance number [of the purchaser, which goes on the return] … is one example of additional information, but it is the common currency that the Inland Revenue uses to deal with all its taxpayers and contacts. However, if the national insurance number cannot be provided, that by itself will not prevent a certificate from being introduced. Again, the question is when we will introduce the steps that allow us to move towards an e-conveyancing system while at the same time allowing flexibility. I believe that the right balance has been struck …
>
> The hon. Lady asked why the forms were so long. She said that they take longer to complete than under the old system and that they will increase the cost of buying a

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97 *op.cit.* 370. This calculator is at: http://ldcalculator.inlandrevenue.gov.uk/
98 "Stamp duty survey hits at red tape", *Financial Times*, 12 April 2004
99 HC Deb 21 January 2004 cc 445-467WH
100 for example, the online duty calculator – mentioned by Ruth Kelly above – did not work until the end of the first week in December (*op.cit.* c 464WH).

> house. The forms seem longer because they had to be made IT compatible. In fact, they ask for virtually the same information that the stamp duty office asked for under the old stamp duty regime. We have taken steps to assist practitioners in implementation, such as the light touch approach, manual working and educational discussions on duty, and although we accept that it will take time for practitioners to become familiar with the form, we do not see any reason why in the long run the time taken to complete it should be significantly more than under the old regime.
>
> I would also say that more than 98 per cent. of transactions will need only the basic form. The supplementary forms will be required only in a small proportion of transactions, primarily commercial ones, which is exactly the area where the distortion and the problems were occurring.[101]

The Minister also explained that in the light of concerns Revenue officers had been instructed to adopt a 'light touch' approach as the new system bedded down:

> One of the messages that came across loud and clear [in events organised by the Revenue to publicise the new regime with solicitors and conveyancers] was that practitioners wanted some flexibility in how SDLT was introduced. The interested parties are urging the Government to adopt a light touch approach and provide such flexibility as to allow various ways to support their documents, as well as the move to e-conveyancing ... This is a matter for the Government—Ministers' shoulders are broad—and this is what we must do. It will allow the Inland Revenue to adopt a light touch approach for a limited period to accept returns that do not include all the information that is required in the longer term. That light touch, which has been well publicised, also extended the time before the Inland Revenue will seek to charge interest and penalties because of late delivery of forms.[102]

In her speech Ms Watkinson also mentioned the position of first-time buyers:

> Four years ago, just 40 per cent. of first-time buyers paid stamp duty, and of those who did nearly all paid at the lowest 1 per cent. levy. Now only 25 per cent. of first-time buyers purchase property below the £60,000 threshold. Strikingly, in London and the south-east the figure is only 2 per cent. of first-time buyers …
>
> The number of first-time buyers is at its lowest point since the early 1980s, a clear indication that affordability is stretched to the limit. Wide-scale home ownership is one of the cornerstones of the British economy, and is one of the factors that make our economy different from the rest of Europe. For most people, buying a house is their major lifetime purchase, or at least an aspiration that offers independence and freedom from the feudal ties of a landlord. Stamp duty land tax has turned homeowners and mortgage borrowers into a milch cow for the Treasury, rivalling even the beleaguered motorist.[103]

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[101] *op.cit.* cc 462WH, 464-4WH
[102] *op.cit.* c 462WH
[103] *op.cit.* cc 448-9WH

In response the Minister said the following:

> The hon. Lady made a great deal in her speech about first-time buyers who cannot purchase because of rising stamp duty. I would like very gently to remind her that the Government have not increased stamp duty for the past three years, that transaction costs in the United Kingdom are lower than in most European countries and that the introduction of SDLT did not affect residential rates.[104]

## D. Budget 2004

Prior to the Budget the Government received some representation that the zero rate threshold should be increased for residential property, in the wake of the trend mentioned above, that the continued rise in house prices had resulted in more first-time buyers paying duty:

> Almost all first-time home buyers in London and the south-east paid stamp duty last year, compared with less than half 10 years ago, according to a report published yesterday, underlining the barriers to entry in the overheated property market. Nationwide, the largest building society, urged the government to help hard-pressed new buyers by raising the stamp duty threshold for first-time buyers from £60,000 to £150,000. The latter figure is just below the level at which stamp duty would begin had it been linked to the rise in house prices.
>
> Nationally, three-quarters of new buyers are hit by the tax compared with 18 per cent a decade ago, due to rapidly rising house prices and an effective tax increase by freezing stamp duty thresholds in most years. Stuart Bernau, Nationwide director, called for "urgent" government measures to help this group - widely regarded as the lifeblood of the housing market. The sharp rise in house prices and increased levels of debt, including student loans, had caused the number of first-time buyers to drop to its lowest level for 20 years. Their average age had risen from 27 to 31 over the past 10 years. In London and the south-east - the hottest property market - 98 per cent of new buyers have to pay stamp duty, typically £1,894 in London. Only in Scotland and northern England do a minority of first-time buyers pay stamp duty.
>
> Nationwide said if the stamp duty threshold were increased to £150,000 only 23 per cent of first-time buyers would pay the tax. It suggested clawing back the money from other homeowners so the concession would be tax neutral. Stamp duty on residential property is a big money-spinner for the government. The tax raised £3.6bn in 2002-03, more than four times the £830m raised in 1997-98. Meanwhile, the Council of Mortgage Lenders said house prices would have to fall by 22 per cent before people who became first-time buyers in 2002 were exposed to negative equity. The CML said it did not expect prices to fall but even if they did, the number of people likely to be affected would be modest compared with the 1.7m with negative equity in the early 1990s.[105]

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[104] *op.cit.* c 463WH

[105] "Big rise in first-time buyers paying duty", *Financial Times*, 5 March 2004. see also, "Stamp duty deters first-time buyers", *Sunday Telegraph*, 7 March 2004

However, in his Budget speech on 17 March 2004 the Chancellor stated that he would "freeze stamp duty."[106] Although duty rates and thresholds are unchanged, a number of other measures were announced at this time – the most important of which related to partnerships:

> **Stamp duty land tax**
> 5.104 A modernised regime for stamp duty on property transactions was successfully introduced on 1 December 2003. However, certain transactions involving partnerships remained outside the new regime, creating ambiguity and opportunities for avoidance. Legislation will now be introduced from Royal Assent of Finance Bill 2004 to level the playing field between these partnerships transactions and transactions undertaken by individuals. No changes in stamp duty rates or thresholds are proposed in this Budget.[107]

Further details were given in a Budget Notice issued by the Revenue:

> **Current law and proposed revisions**
> Currently, Stamp Duty Land Tax applies to most acquisitions of an interest in land situated in the United Kingdom. However, the transfer of an interest in land into a partnership, the acquisition of an interest in a partnership (where the partnership property includes an interest in land) and the transfer of an interest in land out of a partnership, were excluded from Stamp Duty Land Tax. Draft legislation was published on 20 October 2003 and following consultation, these transactions will be brought within the scope of Stamp Duty Land Tax from Royal Assent.
>
> Stamp Duty Land Tax will now be charged on the following transactions:
>
> - where an interest in land is transferred into a partnership, either by an existing partner or by a person in exchange for an interest in that partnership. Stamp Duty Land Tax will be chargeable, at the appropriate rate, on a proportion of the market value of that land interest. The proportion will be equal to the proportion of the land interest transferred to the other partners as measured by their partnership;
>
> - where partnership property includes an interest in land and arrangements are in place so that either:
>     - an existing partner transfers all or part of their partnership interest, to a person who is or becomes a partner, for money or money's worth; or
>     - a person becomes a partner and an existing partner reduces their partnership share (or ceases to be a partner) and withdraws money or money's worth from the partnership; then
>
>   Stamp Duty Land Tax will be chargeable, at the appropriate rate, on the person acquiring the interest or increased interest, on a proportion of the market value of the land interest so transferred. The proportion will be equal to the increased (or new) partnership share held by the acquiring partner; and

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[106] HC Deb 17 March 2004 c 327
[107] *Budget 2004* HC 310 March 2004 p 123

- where a partnership transfers an interest in land to a partner or former partner. Stamp Duty Land Tax will be chargeable, at the appropriate rate, on the person acquiring the interest, on the proportion of the market value of the land interest transferred on which tax (which includes ad valorem stamp duty or, for transactions executed before 20 October 2003, fixed duty) has not previously been paid.

> The changes will charge only the proportion of the property being transferred into a partnership. This recognises concerns raised, that charging the whole value of the land meant that the part of the land retained (through their partnership share) by the person transferring it, was being brought into the charge to tax unfairly …
>
> **Operative date**
> From Royal Assent.[108]

A number of 'technical clarifications' to SDLT were also announced at this time,[109] and a full regulatory impact assessment of the new system was published.[110] This document goes into considerable detail to set out the benefits of this reform, looking first at the issue of fairness:

> **Objective 1: A fairer regime**
> Stamp Duty Land Tax ensures that all relevant transactions are charged. Previously, some larger commercial deals in particular incurred significant professional fees in structuring deals in order to "side-step" the charge.
>
> Under the previous regime, customers could choose to submit their documents to any one of eight stamp offices. While around 96 per cent of documents submitted were turned around within 5 days, some took longer – especially during very busy periods. The new process helps to ensure that all customers receive the same level of service and there is less risk of inconsistent treatment, as returns will be handled in a single centre.
>
> Customers provide details by completing a Land Transaction Return. Customers do not have to submit the full original documentation of transfers as before, eliminating the problem of delayed return or loss of documents. Removing the need for the submission of original documents reduces administrative time and cost, benefiting both stamp offices and customers. The formal commitment to a five day turnaround remains, but we anticipate that customers will normally be issued with a certificate within three working days and that consistent turnaround targets will be achieved irrespective of changes in transaction volumes. Returns will be handled in a single centre.

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108 Inland Revenue Budget Notice REV BN15, 17 March 2004

109 Inland Revenue Budget Notice REV BN37, 17 March 2004. further details are given in Inland Revenue, *Stamp Duty Budget newsletter*, April 2004 http://www.inlandrevenue.gov.uk/so/sdlt-buget04.pdf

110 Inland Revenue, *Final regulatory impact assessment (ria): modernising stamp duty*, March 2004 http://www.inlandrevenue.gov.uk/budget2004/msd.pdf

> Previously, documents selected for our limited compliance checks were not stamped until we were satisfied that the stamp duty paid was correct. The new streamlined "process now, check later" regime processes as many transactions as possible at the initial stages. A certificate is then 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. The "process now, check later" regime will also highlight cases where Stamp Duty Land Tax may have been overpaid.
>
> Stamp Duty Land Tax brings into charge some transactions where stamp duty was not paid on documents simply because there was no obligation to pay duty unless registration of title was required. It also charges tax in some circumstances where the document was exempt from stamping. An example of this is contracts to enter into a land transaction which are chargeable under Stamp Duty Land Tax if they are "substantially performed", that is where the buyer pays for the property or pays rent or takes possession.
>
> But there is a range of circumstances where a land transaction return is not required. These include:
>
> - Gifts and similar transfers which can be self-certified as exempt (if registration of title is sought)
> - Transactions where in the past they were stamped only to validate documents in law. An example here is short-term tenancy agreements which are valid without any equivalent of "stamping".
>
> Data is not available on the number of documents which could have been stamped if presented but were not. The information available to the Inland Revenue can only be based on documents which were presented.[111]

The RIA goes on to look at the issue of e-conveyancing:

> **Objective 2: An e-enabled stamp duty**
> Making the legislative change so that tax applies to land transactions instead of documents enables legislation to be brought in later to facilitate e-registration of title. Conveyancing of property will be speeded up by the introduction of electronic systems. 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 property transfers can be processed through a single system and single point of contact with Government. In advance of those changes we are developing systems for the electronic submission of Land Transaction Returns over the Internet via the Government Gateway. 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.[112]

[111] *Modernising stamp duty*, March 2004 pp 3-4
[112] *Modernising stamp duty*, March 2004 p 4

The RIA concludes by discussing the modernisation of the tax:

> **Objective 3: A more modern, transparent and focused tax**
> Stamp duty was last consolidated in legislation in 1891. This review has provided an opportunity to consolidate and to clarify the charge. 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 were previously chargeable.
>
> These changes to scope will remove the wide definition of "property" in the previous regime which caused confusion. Changes to scope will therefore enable a focused charge that is clearly understood and effectively enforced. Stamp duty cannot be enforced as the Inland Revenue does not have statutory power to assess and collect duty. But with Stamp Duty Land Tax, the enforcement regime is copied from the established income and corporation tax self-assessment systems which will enable the Inland Revenue to investigate transactions, assess tax and charge penalties where errors are found, and give taxpayers clear rights and obligations.
>
> The Inland Revenue will select returns on a risk assessed basis for enquiry and where returns are selected have the power to find the facts and make changes to the self assessment, and will allocate sufficient resources to ensure that the tax is applied fairly. Part of the risk assessment will include identifying cases where there are attempts to avoid the tax.
>
> The fixed duty of £5 on certain documents not involving a sale has been removed under the new regime. This will be a saving for customers, though where registration of title is required a self-certificate or notification of these transactions may still be required. Previously, a stamp duty payer could only appeal against an adjudication directly to the High Court. We have now introduced a range of appeals in line with those in place for the self-assessment regime.[113]

[113] *Modernising stamp duty*, March 2004 pp 4-5

## Appendix : Stamp duties other than those on land[114]

**Stocks, shares, debentures etc.**

Transfers on sale. Transfers of stocks and shares are chargeable on the price of the shares, at a single rate, currently ½ per cent and with no threshold. Before 1984 the rate was 2 per cent but it was then reduced to 1 per cent. It was further reduced to ½ per cent from 27 October 1986. At the same time the duty was then widened to include certain transfers previously exempted including company takeovers and mergers, letters of allotment, purchase by a company of its own shares, and certain loan stock. A higher rate of duty - 1½ per cent - is charged where shares are converted into depository receipts or transferred to a clearance service.

Stamp duty reserve tax. Most transactions in securities now take place without an instrument of transfer, notably dealings in dematerialized shares such as within the CREST system. SDRT, introduced in 1986, applies to these transactions. It is charged at the same rate as stamp duty on paper transfers. It also applies to the purchase of securities registered in the name of a nominee who acts for both buyer and seller, and the purchase of securities which are resold before they are transferred to the buyer.

**Other stamp duties**

Capital duty. This 1 per cent duty on the raising of capital by companies was abolished from 15 March 1988.

Life insurance policies. Duty was payable at the rate of 50p per £1,000 of the sum insured. The duty was abolished from 1 January 1990.

Unit trust instrument duty. The duty of ¼ per cent on the value of property put into a unit trust was abolished from 15 March 1988.

Bankers' composition. Banks in Northern Ireland could pay by composition stamp duty on bank notes issued by them. The duty was at 50p per £100 of the average value of notes in circulation each half year. The duty was abolished from 1 January 1992.

Voluntary dispositions. These were liable to duty as if they were conveyances or transfers on sale, with the substitution of the value of the property transferred for the consideration for the sale. Voluntary transfers to charities were exempted from duty from 1982 and the remainder in 1985.

Documents not classified. These are mainly those charged with fixed duties and consist largely of duplicate documents and deeds of trust. Since October 1999 the fixed duty has been set at £5.

Penalties. These are charged on documents submitted after the 30 day period permitted for submission after completion of the sale. Since 1 October 1999 interest can also be charged on late submission of document or delayed payment of duty. A de minimus limit of £25 applies to the interest charge.

[114] *Inland Revenue National Statistics : Stamp duties* www.inlandrevenue.gov.uk/stats/stamp_duty/sd_b_1.htm