The additional charge to SDLT

The proposals on the higher SDLT charge for second homes are riddled with anomalies.

The proposals regarding SDLT in the Autumn Statement regarding buy to let properties and second homes have been supplemented by further announcements.

The 3% increase in the rates of SDLT across the board for these purposes (although not for purchases under £40,000) will apply to all contracts entered into on or after 26 November 2015 where completion takes place after 1 April 2016.

That is clear enough, but there are also some transitional rules – although they do not seem to add anything. For example, the new rates will not apply to contracts entered into before 26 November or where completion takes place before 1 April 2016. Well, yes. The only difference would seem to be the acknowledgement by HMRC that completion will be treated as including substantial performance.

It is also confirmed that these new rates will apply to foreign investors and to anybody who owns another property anywhere in the world if they purchase an additional property in the UK.

This seems to be rather a complex idea. A foreign person buying property in the UK ought to be able to understand which rate of SDLT will apply to his purchase. He now needs to be interrogated regarding his property holdings in other countries. What if he lives in rented accommodation in another country? And what if there are other properties in a trust or a company which he uses – or lets.

Given that an overseas purchaser by definition lives abroad, he must live somewhere; so presumably, unless he is homeless, he will be liable to the 3% surcharge. Do we not feel that Mr Osborne is getting a little carried away here?

Some of these questions have been answered by the consultation document published on 28 December. This makes it clear that the higher rate will not apply where the individual purchaser only owns one residential property, irrespective of the intended use of the property. So where a person who lives in rented accommodation buys a residential property as an investment, he will not have to pay the higher rate – but I wonder what 'rented accommodation' means. Would it include a long lease?

Nor will the higher rate apply where an individual is replacing his main residence. If the individual sells his main residence within 18 months of the purchase of a new property that is going to be his new main residence, that process will be regarded as the replacement of a main residence – and it will not matter how many other properties he may have.

The Treasury seems to think that identifying the main residence is quite simple: 'In most cases the position will be clear.' This must be some kind of code. Either that or the person drafting the consultation document is not up to date with his reading of tax cases. In reality, the unbelievably contradictory case law on the subject means this is going to be a seriously difficult problem. To make matters worse, there will be no right of election, so the main residence for SDLT purposes may differ from that for CGT.

The new rules only apply to purchases of residential property, but there is an exemption where six or more residential properties are bought in a single transaction. Therefore, buying one buy to let property is a bad thing and needs to be penalised – but buying seven is a good thing and deserves a reward. Um, I think I need a lie down.

The treatment of trusts is particularly troublesome. The general idea is that if a beneficiary has an interest in possession in the property, he will be liable to the SDLT at the higher rates. (That will be popular; I wonder where is he supposed to get the money from?) Where there is no interest in possession in the property, the trustees will be liable to the higher rates – apparently whatever the circumstances.

It may be remembered that stamp duty used to be charged on the slab basis – if you crossed the threshold you paid the higher rate on the whole of the consideration. HMRC acknowledged the unfairness this created and now charges SDLT on the slice basis, so that you only pay the increased rates on the consideration over the relevant limits. So, what happens with the £40,000 exemption from this 3% rate? The old slab basis applies. Transactions under £40,000 are not subject to the higher rate of SDLT – but anything over £40,000 is chargeable on the full amount. Therefore, a purchase for £41,000 will cost stamp duty of £1,230. However, I dare say this is only one of the screaming anomalies which will be fixed during the consultation process. ■

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For more on the SDLT proposals, see 'The condoc on higher SDLT rates' (Paula Tallon), Tax Journal, 15 January 2016.

Report on HMRC's charter finds room for improvement

Further work is needed to build public confidence in the tax authority, particularly at a time when HMRC is embarking on a profound transformation exercise.

Tax legislation imposes many obligations on taxpayers. It gives HMRC the legal right to collect tax and to administer the tax system, but it doesn't impose any 'customer care' obligations on HMRC.

That gap was filled many years ago when the Inland Revenue published the taxpayer's charter, which for the first time set out some basic obligations as to how taxpayers should be treated. Although the charter was never formally withdrawn, it fell into abeyance until it was revised in 2008. That version was called *Your charter*, and set out not only what taxpayers could expect from HMRC but also what HMRC had a right to expect from taxpayers: among the latter were being honest and treating HMRC staff with respect.

There has been a fair amount of cynicism about the charter, particularly the HMRC's commitment to 'treat you as honest'. All too often, people say that when HMRC launches an enquiry it feels as if they are being treated as guilty and required to prove their innocence. That sentiment is reflected in the latest survey figures (see *Your Charter Annual Report April 2014–March 2015*, www.bit.ly/1UbdVhj), which show that only 61% of individuals felt that HMRC treated them as honest. There is a long way to go.

I welcome the fact that HMRC has taken steps to give more prominence to the charter within the department, and has created a charter committee, with a majority of independent members, to report directly to the Board of HMRC. Public confidence in the tax authority is a fundamental bedrock of a democratic society – never more so than when HMRC is embarking on a profound transformation exercise.

HMRC has not helped itself by amending the wording of the charter to coincide with the issue of the latest report of the charter committee. Although it does appear that no fundamental changes have been made, it would surely have been better, in the interests of transparency, to set out clearly what had changed. To find out what had changed, it was necessary to dig deep into the internet archives to compare versions. In an increasingly digital world, it will be very important to be able to access earlier versions of documents. In a tax dispute, for example, it is often necessary to be able to refer to the HMRC guidance which was in force at the time of the transaction; yet all too often this seems to have disappeared into thin air.

Although I am an enthusiast for digitalisation, part of me feels nostalgic for the old days, when there was a beautifully hand lettered version on a wooden panel on display in the Inland Revenue's head office – at least that couldn't be amended at will. ■

Andrew Hubbard, RSM
(RSM Weekly Tax Brief)

Could VAT finally be introduced in the Gulf?

It now looks likely that VAT will be introduced in the Gulf. How might this work?

For over ten years, Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE) –the six countries that make up the Gulf Cooperation Council (GCC) – have been talking about whether to introduce a form of VAT across the GCC region. It now looks as if it might finally happen, perhaps from 2018, although there can be no certainty until the necessary laws are passed.

Although there have been few official pronouncements, it is understood from comments made recently by the UAE finance minister undersecretary Younis Haji Al Khouri that GCC countries have agreed on the main aspects of the tax. They are believed to have agreed a draft framework agreement, but each state will need to draft its own laws incorporating the principles.

A tax rate of between 3% and 5% is likely. It is believed that there will be exemptions for healthcare, education and a number of food items. However, it is not yet clear whether there will be an exemption for financial services and this may be an area where agreement has not yet been reached.

Comments made by Mr Al Khouri suggest that the tax may not be introduced across the whole region at the same time. He said that once any two states had their laws ready, VAT could be introduced in those states. It sounds as if the UAE's draft laws are well advanced and so it is likely to be in the first wave, although Mr Al Khouri said it would need until 2018 to make the necessary arrangements.

Although falling oil revenues may have given the initiative greater momentum – and the introduction of VAT was recommended in November by IMF managing director Christine Lagarde – the fact that it has been talked about for so long shows that this is not just a reaction to the drop in oil prices.

Leaving aside the revenue raising potential, a significant benefit for GCC governments is the wealth of data about what is going on in the economy that the administration of the tax will produce.

Charging and paying VAT will result in practical challenges for businesses. Surveys of Gulf businesses have revealed that the majority have accounting systems which lack the functionality to deal with VAT and may need to be replaced altogether. Many businesses in the region have little knowledge of how a VAT system operates, so a considerable investment in training will be required – for both businesses and tax officials.

If it follows the EU model, a refund system will be required, and that immediately exposes the tax authorities to the risk of fraud. If established and experienced tax authorities in Europe can lose billions a year in fraud, then there must be a considerable risk in the GCC, where often poorly resourced tax authorities will be grappling with an unfamiliar tax.

The VAT treatment of financial services in the new regime will be key for the UAE, in particular, as Dubai operates as a hub for financial services operations in the region. Back office services for branches throughout the GCC are often outsourced to Dubai. If financial services are exempt, outsourcing could cause irrecoverable VAT. It is also not clear how real estate transactions will be treated, which could impact on the UAE's burgeoning real estate sector. A further issue is how the introduction of VAT will affect the region's numerous 'free zones'.

Overall, the biggest challenge for Gulf businesses is the uncertainty that the prospect of VAT is causing. Although the introduction may be some way off, businesses need to be gearing up for the new tax. ■

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