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BY POST AND EMAIL (sdladditionalproperties@hmtreasury.gsi.gov.uk)

29 January 2016

Dear Sirs,

Consultation on Higher Rates of Stamp Duty Land Tax ('SDLT') on purchases of additional residential properties published 28 December 2015 ("the Consultation")

We are responding as a professional law firm on the Consultation as follows:

Section 3 – Administration and Compliance

It is noted under Section 3.1 of the Consultation relating to changes to the SDLT Return Form that taxpayers will have to specify that a given transaction is for an additional residential property. It is evident that for most UK taxpayers that it will be reasonably straightforward to determine whether an additional residential property is being purchased on the basis of evidence available at HM Land Registry. For a foreign purchaser it may not be so easy to determine and it therefore may be discriminatory against them (and even unworkable in instances where a foreign system of law is quite different from ours). In France, for example, if a property is already under the ancient system of Viager, where you sell your home and get paid to stay there, it may be particularly difficult to make an accurate SDLT return with respect to any new transaction.

Section 3.1 indicates that the “ultimate responsibility for the accuracy of an SDLT return remains with the purchaser and HMRC will provide guidance on how purchasers can determine whether the disposal of a property can be considered as a disposal of a main residence”, but it is not apparent how that might be done.

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Accordingly, in response to Question 10:

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

Our Response is that it is inherently discriminatory and unfair to foreigners, so we do not agree with the government's approach.

In response to Question 20:

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

Our response is that a formal declaration would be presumably the best way to deal with this, although the purchaser will need guidance from HMRC directly rather than placing the burden on conveyancers. This should illustrate in sufficient detail circumstances in which a purchaser will reasonably be able to determine whether or not any purchase in any given instance is of an additional residential property. In the circumstances outlined above, where property is held under the French Viager system, this might be extremely difficult and it is hard to see how guidelines could possibly be comprehensive enough to address this issue in every instance.

Yours faithfully

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