

**STPG**

**Stamp Taxes Practitioners Group**



**Chartered  
Institute of  
Taxation.**

## Stamp Duty Land Tax (Reduction) Bill

### Executive Summary

**The Stamp Duty Land Tax (Reduction) Bill provides an opportunity to correct technical defects in the legislation for first-time buyers' relief, removing uncertainties that create pitfalls for buyers, simplifying the legislation and also removing a potential opportunity for exploiting first-time buyers' relief in a way that was not intended.**

### 1 Overview

- 1.1 The Stamp Duty Land Tax (Reduction) Bill 2022-23 (Bill 171 2022-23) was introduced in the House of Commons on 24 October 2022. It received its second reading on the same day. The Bill increases the thresholds at which Stamp Duty Land Tax (SDLT) on residential property begins to be paid in England. It increases the residential nil-rate tax threshold from £125,000 to £250,000. In addition the nil-rate threshold for first time buyers' relief<sup>1</sup> is increased from £300,000 to £425,000 and the maximum property value that is eligible for first time buyers' relief is increased from £500,000 to £625,000.
- 1.2 In the Autumn Statement on 17 November, the Chancellor announced the introduction of a sunset clause ending the increase in the thresholds in March 2025. These threshold increases therefore apply to residential property bought between 23 September 2022 and 31 March 2025 (subject to transitional provisions). After March 2025 the thresholds revert to previous levels.
- 1.3 An amendment paper for the Bill's Committee Stage was published on 28 November 2022 in relation to the threshold increases now being temporary<sup>2</sup>: An amendment also proposes that the Bill is re-named the Stamp Duty Land Tax (Temporary Relief) Bill . A Tax Information and Impact Note was published on 28 November 2022.<sup>3</sup>
- 1.4 The Committee of the Whole House and remaining stages of the Bill in the House of Commons are scheduled to take place on 10 January 2023<sup>4</sup>.

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<sup>2</sup> [https://publications.parliament.uk/pa/bills/cbill/58-03/0171/amend/stamp\\_duty\\_pbc\\_rm\\_1128.pdf](https://publications.parliament.uk/pa/bills/cbill/58-03/0171/amend/stamp_duty_pbc_rm_1128.pdf)

<sup>3</sup> <https://www.gov.uk/government/publications/stamp-duty-land-tax-temporary-reductions-for-residential-properties>

<sup>4</sup> See <https://commonslibrary.parliament.uk/research-briefings/cbp-9698/>

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- 1.5 The Bill provides an opportunity - an opportunity which we believe should be taken – to highlight and correct technical defects in the legislation for first-time buyers' relief<sup>5</sup> removing uncertainties that create pitfalls for buyers, simplifying the legislation and also removing a potential opportunity for exploiting first-time buyers' relief in a way that was not intended.

**2 SDLT first-time buyers' relief – technical defects**

*Buying through a nominee*

- 2.1 Typically when acquiring a dwelling in a new development the purchaser is granted a long lease rather than the acquiring a freehold interest. A first-time buyer who wants to protect their identity for security reasons may wish to buy in the name of a nominee (such as a professional person or company). The nominee is granted a new lease to hold for the first-time buyer. Normally SDLT looks through to the actual buyer (the beneficial owner) but here the first-time buyers' relief cannot apply because the rules for first time buyers' relief do not disregard the special SDLT rule<sup>6</sup> about the identity of the purchaser where the transaction is a grant of a lease. This means the relief is not available because the nominee is treated as the buyer and cannot claim the relief as it is the underlying buyer, not the nominee, who intends to live in the property as their only or main residence.

Example :

Kaylee fears for her safety having been in an abusive relationship. She buys herself a flat to live in. For her security it will be bought in the name of a nominee so that her name is not recorded as the registered proprietor on the (easy to access) Land Registry title. If her nominee takes the assignment of an existing lease Kaylee will benefit from the relief. But if she buys a new flat (so the nominee is granted a new lease to hold for Kaylee) the relief cannot apply.

- 2.2 This anomaly could also be exploited potentially as a means of qualifying for the relief in a way that is not intended.

Example :

An unmarried couple, Andrew and Bryony, are looking to buy a home to live in together. Neither has any property interests at present. Andrew never has, but Bryony owned a home that was sold a while ago. If Andrew and Bryony buy together, no first-time buyers' relief is available because of Bryony's prior ownership of a dwelling. If Andrew takes a grant of a lease in his name alone as nominee for them both, it seems the relief could be available because of the special rule that treats Andrew as the sole buyer in these circumstances despite the fact that Bryony is not a first-time buyer.

- 2.3 A simple amendment to exclude the special rule could be made adopting the wording of the same exclusion for the higher rates of SDLT; see FA 2003 Schedule 4ZA para 10(3) and (4).

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<sup>5</sup> FA 2003 Schedule 6ZA

<sup>6</sup> FA 2003 Schedule 16 paragraphs 3(3) and (4). This rule was introduced to counteract an SDLT avoidance scheme but serves no purpose in the context of first-time buyers' relief.

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*Previously acquiring a mixed-use property*

- 2.4 A person is not a first-time buyer if they have previously acquired a “major interest in a dwelling”<sup>7</sup>. Whether an earlier purchase of a mixed-use property (part dwelling, part commercial eg a flat over a shop) causes the relief to be lost is not clear and could be helpfully clarified in the legislation. The legislation suggests it does not nullify the relief but HMRC’s view is that it does so there is scope for confusion. This could be easily clarified in an amendment.

*Previously acquiring a part share in a dwelling*

- 2.5 There is also uncertainty about whether a person who has previously acquired a part share in a property means the buyer is not a first-time buyer, in other words whether a previously acquired part share in a dwelling is “a major interest” for the purposes of this relief. It seems reasonably clear that the intention is for part shares to be included in the definition of major interest for these purposes. However, it would be clearer and simpler to have express wording in the legislation. A simple amendment could be introduced using precedent wording that already exists elsewhere in the SDLT legislation.

*Previously acquiring a major interest in a dwelling*

- 2.6 A prior acquisition of a major interest disqualifies someone as a first-time buyer regardless of the value of the interest held<sup>8</sup>. This is in contrast to the limit chosen for the higher rates of SDLT where a low value interest (under £40,000) is disregarded. The lack of an equivalent disregard compounds a further area of uncertainty where a first-time buyer has previously acquired an interest in a fiduciary capacity, for example adult children acquire a share of a dwelling as trustees under a will trust for their widowed parent, the widowed parent having a life interest in the family home. It is unclear whether their fiduciary interest precludes relief. The issue becomes more complex if the interest is a right over a dwelling somewhere else in the world that operates a civil law structure so there is no equivalent interest under English law.

Clarification in the legislation would remove these potential bear traps for first-time buyers.

**The Chartered Institute of Taxation and the Stamp Taxes Practitioners Group**

The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

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<sup>7</sup> Finance Act 2003 Schedule 6ZA paragraph 6(1)(a) and paragraph 8

<sup>8</sup> The definition of a major interest for first-time buyers’ relief confirms only that a lease only counts as a major interest if it has 21 years or more to run at the effective date of the transaction. See FA 2003 Schedule 6ZA paragraph 8.

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The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Stamp Taxes Practitioners Group (STPG) is the leading professional forum for stamp taxes practitioners consisting of 206 members. Members are drawn from the legal, accountancy and surveying professions and include practitioners in the fields of tax, real estate and conveyancing.

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The Chartered Institute of Taxation  
5 January 2023