Modernising Stamp Duty

on land and buildings in the UK

A Consultative Document

April 2002

Contents

Part 1

Foreword 3

Executive Summary 4

About the consultation process 8

Part 2

Chapter 1: Introduction and outline 10

Chapter 2: Scope 12

Chapter 3: The process 18

Chapter 4: Rate structures 24

Chapter 5: Reliefs and other provisions 27

Chapter 6: Complex commercial arrangements 29

Chapter 7: Taking change forward 31

Annexes

Annex 1: Outline of the existing stamp duty regime 33

Annex 2: Notification under the revised regime 35

Annex 3: Partial regulatory impact assessment (RIA) 36

Annex 4: Summary of consultation points 43

Annex 5: Code of practice on written consultation 47

Part 1 of this document is also published as a separate Executive Summary.

Part 1

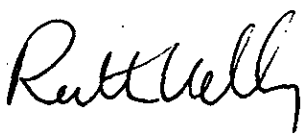
Foreword

Stamp duty on UK land and buildings has been in existence for over 300 years and continues to be an important source of revenue, currently contributing around £4 billion to fund investment in public services. But it is outdated. It does not reflect modern commercial practice in the ownership, use and transfer of land and buildings, and is not suited to the rapidly developing world of e-business and electronic transactions.

The Government is also concerned about growing avoidance of stamp duty by a minority, at the expense of the majority of taxpayers. In particular, some companies are determined not to pay their full share of duty and structure property transactions in increasingly artificial ways to achieve that. This activity represents a significant threat to the tax base. We are determined to stop this abuse.

The case for major reform is overwhelming. We therefore propose to legislate in the 2003 Finance Bill to modernise stamp duty. In line with our commitment to consultation, this is a first step in inviting views on the detail of the proposed reform. Our aim is to create a stamp duty that better reflects modern commercial practice and paves the way for future developments in e-business and the house-buying process.

I hope that everyone with an interest in stamp duty will take part in discussions with the Inland Revenue over the coming months.



Ruth Kelly

Economic Secretary to the Treasury

Executive Summary

The Government has decided that the existing stamp duty regime for UK land and buildings should be modernised. This consultative document outlines proposals for a modernised stamp duty regime.

The objectives of modernising stamp duty are:

- **fairness**: the Government is concerned about the increasing extent to which stamp duty is being avoided. The use of artificial arrangements to avoid stamp duty on commercial property transactions is unfair to the compliant majority, particularly small businesses acquiring premises and individuals purchasing their own homes;
- **e-business**: to create a regime that supports the Government's e-business agenda, and in particular the introduction of electronic conveyancing, which will make the house-buying process simpler, quicker and more efficient; and
- **modernisation**: to create a legal framework for stamp duty in line with more modern taxes, providing a level playing field and creating a charge that is based more on the substance of transactions.

In broad terms, the anticipated impact of reform is:

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 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.

Shares and securities

In the main, transfers of shares and securities are charged to stamp duty reserve tax (SDRT), which was introduced in 1986. This reform will not disturb the scope and impact of the main SDRT charge and of stamp duty as it applies to share transfers.

Main proposals for the revised regime

Introduction and outline (Chapter 1)

This chapter describes how stamp duty will be administered under a revised regime through two phased changes. Firstly, towards the end of next year it will no longer be necessary to send in the documents required at present. Instead, there will be a standard form for notification, which will be available electronically as soon as possible. Payment will be accepted by cheque, cash, BACs or CHAPs, as at present. Other electronic means of accepting payment are already being explored. Procedures will be introduced to ensure the land registries can check that payment has been made in advance of registration. Further details are set out in chapter 3.

The second phase will happen as the land registries introduce electronic systems for conveyancing and other registration procedures. The aim is for these systems to replace the need to notify the Inland Revenue separately of a chargeable transaction. Stamp duty will also be collected electronically via these systems.

Scope (Chapter 2)

A key feature of the revised charge will be that it is limited to transactions involving land and buildings in the UK.

- Other types of assets, such as goodwill and receivables, will be removed from the scope of stamp duty. This will facilitate the sale and purchase of businesses, and by removing a charge which affects certain financing transactions such as debt factoring and securitisation of debts, should assist UK businesses in obtaining cheaper finance.
- The charge will extend to transfers of substantial interests in entities (such as companies) owning mainly UK land, in order to prevent the avoidance of stamp duty through the use of "special purpose vehicles".

Partial implementation of this reduction in scope is being achieved this year with the abolition of stamp duty on transfers of goodwill, announced in the Budget.
The revised charge will also clarify that liability for stamp duty will usually fall on the purchaser or lessee. Current law doesn't specify who is liable - but purchasers normally pay the duty in practice.

Process (Chapter 3)

The Government's intention is to revise the way in which stamp duty on UK land and buildings is administered.

- The revised procedure will require completion of a standard notification by the purchaser or lessee, who will also be liable for payment. In practice, of course, solicitors and other agents may well deal with this on behalf of the purchaser or lessee.
- The notification and charge will fall due when payment is made, or other value passes, in satisfaction of a contract or other agreement to transfer an interest in land. But there will be rules to ensure that payment of a deposit on exchange of contracts for house purchase does not result in stamp duty being due before completion.

- It will no longer be necessary to submit all the documents currently required with notification and payment. But it may be necessary to provide those documents where the transaction is selected for review by the Inland Revenue. That will only happen for a very small number of residential purchases by individuals.
- The framework will be suitable for a transaction-based tax, backed up by appropriate enforcement rules covering record keeping, enquiries, interest, penalties and appeals.
- The requirement to account for stamp duty prior to registration of property title will remain.

This will maintain a quick and efficient system for processing and collection, so that in practice, for most individual house-buyers, the tax is reported and paid on completion as now.

Rate structures (Chapter 4)
The Government intends to keep the existing rate structure for stamp duty, known as a "slab system", which applies a single rate to the whole of the purchase price.

The Government intends to review the duty on the grant of new leases so that, in time

- the charge corresponds more closely to a stamp duty charge on a transfer of property of a similar value,
- it better reflects modern commercial practices, and
- stamp duty on the sale or conveyance of property is not avoided merely by the creation and transfer of a lease.

Lease duty will be fully considered during consultations. The majority of shorthold tenants and residential leasehold "purchasers" should not be significantly affected.

Reliefs and other provisions (Chapter 5)
The Government proposes that existing reliefs (such as on transfers to charities) will be carried into the new regime, except where doing so would undermine the intention for stamp duty to apply fairly.

It is also intended that other existing provisions be replicated, unless they are clearly no longer relevant for the revised regime (such as administrative provisions about stamping).

Complex commercial arrangements (Chapter 6)
The Government recognises the importance of facilitating transactions for the development and financing of UK property, so far as that is possible without damaging the tax base. An important objective is therefore to design a modern regime which is sufficiently flexible to cater for complex commercial transactions and the use of new and innovative property owning structures, in place of the existing rules (many of which have been in existence for over 300 years).

The Government wants the fullest possible understanding of the effect of these proposals on businesses involved in the acquisition, occupation and ownership of UK land, and so businesses are encouraged to identify any potential difficulties at an early stage. The use of limited partnerships and joint ventures, large development projects involving several parties, and the use of UK land as security for bond issues will all be considered carefully.

Taking change forward

Chapter 7 covers the proposals for taking change forward. There will be a consultative committee structure, with a main steering committee and a number of sub-groups focusing on specific sectors or specific issues. The Inland Revenue will hold a series of early meetings to establish appropriate representation on, and timetables for, those committees.

The Government intends that legislation to deliver the new stamp duty regime will be introduced in Finance Bill 2003, with supporting regulations after Royal Assent, and take effect later that year. Responses to this consultative document are therefore sought no later than Friday 19 July 2002. The aim is to publish draft legislation with a view to further consultation towards the end of 2002.

Scotland and Northern Ireland

Certain aspects of the charge and the accounting processes will need to reflect the different legal and conveyancing systems in Scotland and Northern Ireland. This document does not attempt to identify the specific areas where the rules will differ, but there will be full consultation with legal practitioners and property owners in Scotland and Northern Ireland to ensure that their interests are taken fully into account.

About the consultation process

This document is the beginning of a major Inland Revenue consultation arising from the Government's intention to modernise the stamp duty charge on land in the UK. Full details about the proposed consultation process are set out in part 2, chapter 7 of this document.

Part 1 of this document is also available as a separate Executive Summary.

Written comments on the issues raised in this document should be sent by post to:

Helen M. Smith
IR Stamp Taxes
Room 113, New Wing
Somerset House
Strand
London
WC2R 1LB

or by email to:

msd.stampscondoc@ir.gsi.gov.uk]

to arrive no later than **19 July 2002.**

In accordance with the Inland Revenue's code of practice on consultation, which is set out in part 2, annex 5, once the outcome of the consultation is announced, the Inland Revenue will make available, on request, responses to consultations, unless any respondent has asked for his or her comments to be treated as confidential. If you wish for the whole of your comments, or your name and address, to be treated as confidential, please say so when responding.

If you have any complaint about any element of the consultation process leading from the issue of this document, please contact Paul Heggs, Inland Revenue, New Wing, Somerset House, Strand, LONDON, WC2R 1LB. Or you can contact him by telephone (020 7438 6302), fax (020 7438 6472) or by email at ***paul.heggs@ir.gsi.gov.uk***

This document, and the Executive Summary, are available free of charge from the following address:

Inland Revenue Visitors Information Centre
Ground Floor, South West Wing, Bush House, Strand, London WC2B 4RD

Or can be accessed on the Internet at: **www.inlandrevenue.gov.uk/consult_new**

Published on 17 April 2002.

Part 2

Chapter 1: Introduction and outline

1.1 Stamp duty on UK land and buildings has been in existence for over 300 years. The legislation was last consolidated in 1891. It has a relatively simple structure and is cheap for the Government to administer. It is a major contributor to the UK Exchequer bringing in at least £4 billion annually. Stamp offices process around 1.5 million residential conveyances annually and in excess of 100,000 commercial documents.

1.2 But in the 21st century information technology is becoming increasingly a part of life. The UK land registries are planning to introduce paperless electronic systems for conveyancing and registration within a few years.

1.3 At the same time, the Government is increasingly concerned about the extent to which stamp duty is avoided. Many of the opportunities for avoidance arise from the fact that stamp duty is a charge on particular documents (meaning transactions can be constructed to rely on different documents) and the charge does not attach to a particular person (and so cannot be enforced even if non-payment is identified). Left unchecked, this represents a significant threat to the tax base.

1.4 Against this background, a tax on paper documents is not sustainable in the long term. Change is inevitable, and in addition this reform of stamp duty will pave the way for wider changes to land transfer and registration of title. Broadly, there will be two phases:

- implementation of a revised system for administering stamp duty in the Inland Revenue, and
- the adaptation of that system to the various land registry electronic systems as they come on-line.

1.5 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.

1.6 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.

1.7 More detail about the land registry projects can be found at: **www.econveyancing.gov.uk** (which will be available soon to coincide with the launch of HM Land Registry's consultative document on electronic conveyancing) and at **www.ros.gov.uk.** (Registers of Scotland – available now - follow link for ARTL)

Chapter 2: Scope

2.1 This chapter sets out the intended scope of the revised charge, how it arises, the amount on which it will be calculated and who will be liable to pay.

Outline scope

2.2 The revised charge will apply to any transaction under which a party

- transfers or grants, or agrees to transfer or grant, to another person an interest in UK land in return for value, or
- enters into certain other arrangements affecting the value of land with another person in return for value.

2.3 The revised charge will apply whether the transaction is carried out electronically or on paper, and the purchaser or lessee will be liable for the duty.

2.4 Underlying the charge are three key concepts. They are:

- the assets falling within the scope of the charge (and those excluded),
- the transactions to which it applies, and
- the value on which the tax will be paid.

Exclusions

2.5 By setting the scope in this way, certain property that is currently within the scope of stamp duty will be excluded.

2.6 The Government's intention is to apply stamp duty only to transactions relating to UK land, and to transfers of shares and securities. Stamp duty would therefore cease to apply to, for example, the sale of goodwill and receivables. These changes will facilitate sales of UK businesses, and will also encourage financing transactions such as debt factoring and securitisation of debts.

2.7 Partial implementation of this reduction in scope is being achieved this year with the abolition of stamp duty on transfers of goodwill, announced in the Budget.

2.8 The Government also proposes to abolish the fixed duties of £5 that apply to certain documents, although there may still be a requirement to notify certain transactions where no tax is payable under the revised regime.

2.9 The rest of this chapter covers the outline scope in more detail.

Assets to which the charge applies

2.10 Central to the current charge are conveyances on the sale of UK land, and the grant of leases over such land. These transactions will continue to be included in the scope of stamp duty.

2.11 The Government also intends to include specific anti-avoidance provisions to avoid erosion of the tax base. In particular, there will be provisions to stop the avoidance of stamp duty through the use of "special purpose vehicles" such as companies or partnerships. These are set out further in paragraph 2.35 and following.

2.12 For the purposes of stamp duty, "UK land" will, in accordance with other legal definitions, include any buildings on such land and any fixtures in those buildings. Fixtures include broadly plant and machinery and any other equipment the removal of which would damage the fabric of the building, rendering the building incomplete and hence unfit for purpose. Lifts, escalators, heating systems, fitted kitchens and bathrooms are common examples of fixtures.

2.13 We propose that chattels (referred to in the current legislation as goods, wares and merchandise) will be outside the scope of the revised charge, as is generally the case now.

2.14 This document proposes that the revised regime will encompass all interests in land, including (for example) freehold and leasehold interests, rights of way, fishing rights, and, of course, the equivalents of these rights under the laws of Scotland and Northern Ireland. Options over, and relating to, UK land will also be within the scope of the revised stamp duty regime, as will equitable interests in land.

2.15 Certain interests or transactions will be specifically excluded, for instance the granting of a mortgage or other security interest over land would, as now, be outside the scope of the charge, as would the transfer of a mortgage by the lender.

- ***Views are sought on the proposed scope of the revised charge and on whether there are categories of land where specific exclusions might be appropriate.***

Transactions to which the charge applies

2.16 This document proposes that the revised charge will apply to any transaction under which a party

- transfers or grants, or agrees to transfer or grant, to another person an interest in UK land in return for value, or

- enters into certain other arrangements affecting the value of land with another person in return for value.

Such transfers for value might arise as a result of a contract, or of a conveyance, or by some other arrangement. The key features to trigger a charge would be value passing one way and an interest in land passing another.

2.17 The scope of the revised regime may also extend to transactions that, though relating to land, and having the same effect as a valuable transfer of the rights attaching to land, are not transfers or grants of interests in land. Examples would be the surrender of a lease, a payment to alter the terms or the value of a lease or the release of rights over land.

The value on which the tax will be paid

2.18 The obligation to pay stamp duty will, as now, depend on the nature of the property transferred. Once it is established that a transaction is within the scope of the revised stamp duty, the next question is on what amount must the tax be paid.

2.19 It is envisaged that the revised charge will apply whenever there is a transaction by which an interest in land passes for value. This value will normally be the amount on which the tax is charged. It is proposed to apply the definition of value used for SDRT as the basis for the revised stamp duty, so that the amount on which tax is paid will include all money or money's worth. For individual house-buyers this will almost certainly be the same amount as would be charged under the existing regime.

2.20 It will probably be necessary to extend this definition, to include certain consideration that does not come within the usual meaning of money or money's worth. This would cover services provided as consideration, or consideration that cannot usually be ascribed a monetary value. We appreciate that such an extension could raise difficulties for certain large development projects where some form of value may pass in the early stages – between, for instance, land owners, developers, investors and contractors.

- ***What is the possible impact on the commercial arrangements for large development projects of the proposals regarding chargeable consideration?***

2.21 The revised duty will preserve, and expand as necessary, the current rules for valuation of consideration other than UK currency. Foreign currency will be valued with reference to the exchange rate, stocks and securities in relation to the average price, and other items according to their market value. Currently, these rules apply to the date of execution of a document. As the revised charge may arise at an earlier stage, this document proposes a new time be identified. Options include the date of the chargeable payment, or the due date for payment of the tax.

- ***Are there any other issues arising from measuring the chargeable value in terms of money or money's worth, extended as proposed, or in the proposals for valuation of certain types of consideration?***

Exchanges of property

2.22 We propose to treat exchanges of property as if two separate transactions were taking place. This is a change from what often happens now, where the contract can be worded so that only one charge crystallises. Under the revised regime, where part of the value passing in exchange for chargeable property is itself within the scope of stamp duty, a charge will arise on the purchase of both properties.

Example: **A** purchases a building from **B**, for which **A** gives **B** £70,000 cash and a smaller building worth £90,000. **A** will be liable for stamp duty on £160,000, the value of the purchase made. **B** will be liable on £90,000, in respect of the effective purchase of the smaller building.

2.23 There may be limited circumstances in which a relief from this rule is appropriate. For example, it is appreciated that this treatment of exchanges may give rise to complications in relation to commercial developments where interests in a site are pooled.

- ***In what circumstances might a relief for exchanges be appropriate?***
- ***What is the likely impact on pooling interests in a development site if exchanges are charged?***

Liable person

2.24 Currently, stamp duty is payable by whoever presents a document for stamping, and there is no legal liability on any particular party to the transaction (except in some very limited circumstances). For a revised charge, with a modern compliance regime, we will need to introduce the concept of a "liable person" who will be required to provide details of a chargeable transaction, pay the charge and against whom the tax liability can be enforced. We propose, in most cases, to make the purchaser the liable person. In practice it is generally the purchaser who pays the stamp duty now.

2.25 In addition, it is purchasers who will wish to register legal title to their new property. We intend to retain the existing requirement for stamp duty to be paid before a disposition of

the land can be registered (see chapter 3). We anticipate that similar arrangements will apply when electronic conveyancing is introduced.

2.26 Where a lease is granted, or there is an agreement that one will be granted, we propose that the lessee will be the liable person for the purposes of the revised charge. Similarly, where the transaction giving rise to the charge does not consist of a sale of property, the person making the payment (the payer) will generally be the liable person.

Existing leases

2.27 The assignment of an existing lease is a transfer of an interest in land, and hence will potentially be a transaction within the scope of the revised charge. Any consideration paid for the assignment will be treated in exactly the same way as the consideration for the transfer of any other interest, as happens under the current regime.

New leases

2.28 The grant of a new lease is also a transaction under which value is given for the transfer of an interest in land. Consideration for a new lease can comprise a lump sum premium, a commitment to pay rent on a periodic basis, or a combination of premium and rent. A charge on the grant of a lease is necessary in order to minimise the influence stamp duty might have on the decision whether to lease or buy. Any charge needs to take into account both the premium and the rental commitment (see chapter 4 for further details about how new leases might be treated under the revised regime).

2.29 At present all new leases – including very short term leases - are within the charge to stamp duty. However, research shows that it is probable that many are not stamped. The Government accepts that there may be a case for excluding the grant of very short term leases from the revised regime. One of the aims of this consultation is to consider whether there is a class of short leases that should be excluded.

2.30 One approach might be to exclude leases of up to three years, because leases for less than that can be created orally under real property law. It is also the long-term aim of HM Land Registry to require leases of more than three years to be registered. At present leases for more than 21 years must be registered, but this is due to be reduced to leases in excess of 7 years when the Land Registration Act 2002 is brought into force (planned for summer 2003).

2.31 The Government will want to ensure that removing the charge on short term leases does not create a tax planning opportunity through the use of renewable leases.

- ***Views are sought on whether and to what extent short term leases should be excluded from charge.***
- ***To what extent are commercial leases granted for periods of less than three years?***

2.32 The existing charge extends to agreements for lease as well as to the grant of leases, although there are special rules to help ensure the same arrangement is not charged twice. We do not think a similar rule should be necessary under the revised regime, since the charge only arises when there is a payment (see chapter 3).

- ***In what circumstances might there be difficulties arising from the use of agreements to lease in practice?***

Overlap with stamp duty reserve tax (SDRT)

2.33 Most transfers of UK shares and securities are charged to SDRT, which was introduced in 1986, although in some cases they remain chargeable to stamp duty. It is not the intention of this reform to disturb the scope and impact of that regime, although there will inevitably be consequential amendments to the primary legislation and regulations.

New rules for "special purpose vehicles"

2.34 The Government has become aware of an increasingly common trend for companies and, occasionally, individuals to transfer UK land and buildings into specially created vehicles in order to avoid or reduce the stamp duty that might otherwise be due on the disposal of that property.

2.35 In a simple scheme, the prospective vendor first transfers the property into a specially formed company (often known as a "special purpose vehicle" or SPV). This is generally done within groups of companies, taking advantage of existing stamp duty reliefs for intra-group transactions. Shares in the SPV are then sold to a purchaser, who effectively becomes the beneficial owner of the property but pays only the smaller (0.5 per cent) SDRT charge or, in some cases, nothing at all (where the SPV is a non-UK registered company).

2.36 The Government is also aware of 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.

2.37 The Government believes this activity is often driven by the desire to avoid or minimise stamp duty, and that, left unchecked, it represents a major threat to the Exchequer. It is therefore determined to take steps to prevent the stamp duty base on UK land and buildings being eroded in this way.

2.38 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.

2.39 The charge will apply to all qualifying transactions taking place 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.

2.40 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).

2.41 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.

2.42 The rules for SPVs will be underpinned by the general enforcement provisions proposed for the revised stamp duty regime (see chapter 3) and by additional compliance provisions specific to SPVs. Again, these will be subject to detailed consultation.

Chapter 3: The process

3.1 The Government intends to introduce revised procedures for administering a transaction-based stamp duty. The actual legal documents recording the chargeable transfer will no longer drive the process. That said, for most home purchases there will be little change in practice, the process will simply be more streamlined.

3.2 Broadly, the revised regime will make provision for the following:

crystallising the charge	the charge will arise when payment, or other value, is given in satisfaction of an agreement about interests in UK land
notification	due within 30 days of the tax charge falling due
payment	due at the same time as notification
record keeping	documents to be kept are the sort of records that the purchaser needs to keep for many reasons other than tax
enquiries	likely to be made primarily on a risk assessed basis; the period during which an Inland Revenue enquiry can be made is likely to be shorter for individual home-buyers than for companies
interest and penalties	these will be appropriate for the regime, and consistent with other taxes
appeals	the aim is for a more flexible, administratively cheaper and easier appeal system than is currently used for stamp duty

3.3 The rules about notification, payment and record-keeping will apply for all transactions. Enquiries will only be made in the minority of cases, and certainly very rarely for residential purchases by individuals.

Crystallising the charge

3.4 This document proposes that the payment of the consideration will crystallise the liability and create a notification requirement. Where a deposit is paid in advance of the main transfer of funds the Government recognises that it would be onerous to require payment of stamp duty on such relatively small amounts.

3.5 Accordingly it is proposed that where the deposit is within certain parameters, payment of the deposit should not crystallise the liability to tax.

3.6 Robust rules for deposits should achieve the right balance between simplicity and reducing the potential for exploitation. One option would be to define a deposit as no more than 10% of the contract price. But this could easily be manipulated so that what is termed a deposit actually represents the full market value of the land being transferred. An alternative might be to apply the 10% limit but only where the contract price represents the market value of the property.

3.7 The aim is for the revised regime to have minimal impact on normal transfers of domestic residences. The deposit should not trigger the revised charge but all the stamp duty notification and payment requirements should fall due on completion. These will be satisfied by the purchaser, or by the purchaser's solicitor acting on their behalf.

- ***Views are sought on how to ensure that a transaction-based charge will in most cases crystallise on completion, as now, rather than when a deposit is paid.***

Notification and payment

3.8 This document proposes that the purchaser should be the person required to notify the Inland Revenue of a chargeable transaction and on whom a liability to tax arises. In the long term, use of an official e-conveyancing or e-registration system would satisfy that notification requirement and thus streamline the purchaser's contact with Government. Full details of the proposals for e-conveyancing in England and Wales will be published by HM Land Registry shortly. The Keeper of the Registers of Scotland intends to publish a consultative document about "Automated Registration of Title to Land" later this year.

3.9 Under the revised regime we do not anticipate needing to review any relevant documents or instruments at the point of notification. Instead, specific details about the purchase will be required, which from implementation will probably be collected by completion of a standard form. The current view on the sort of details required is set out in annex 2. Most of this information is already provided under the current regime, but in a variety of forms.

3.10 In summary, the notification will ask for details of the contract or transaction, and of the full consideration (i.e. the whole amount of value) that has been agreed between the parties. The purchaser will be required to pay a best estimate of the stamp duty due. In order to help purchasers gain assurance that their estimate is correct it may be possible to provide informal help in advance of the transaction concluding. But in practice certain cases may need to be given priority. In the longer term the electronic systems for conveyancing could perform standard calculations of duty automatically.

- ***How could a possible need for pre-transaction rulings fit with the regime described, bearing in mind it would not be possible to review all transactions in this way?***

3.11 In the case of a gift, notification will still be required within the same time limits.

3.12 There are no plans to reduce the ways payment can be made – currently these are by cash, cheque, BACs or CHAPs. Alternative options for electronic payment are currently being developed. The existing choice to pay in Euros and other currencies will continue. Longer term, the intention is for payment of stamp duty to be collected electronically where transactions are reported via electronic conveyancing systems.

3.13 The purchaser will need to notify the liability and pay a best estimate of the tax within a specified time limit from the date the charge crystallises. Currently a person is usually allowed 30 days from the moment the liability arises for notification and payment. Initially it seems reasonable to allow this period to continue. But electronic conveyancing systems should result in notification and payment well within the 30 day limit, and in many cases simultaneous with the liability arising. There is no reason to allow the use of paper documents a cashflow advantage, and so the time limit will need to be reduced for all transactions in due course.

- ***Views are sought on the proposed notification and payment requirements.***

Records

3.14 For each transaction this document anticipates there being a requirement on the purchaser, lessee or other liable person to keep records to support the notification details, plus the full version of relevant contracts and agreements, conveyances, board minutes etc for at least six years after the date liability to notify arises.

3.15 These are the sort of records that are likely to be kept for lengthy periods for many other reasons, so this should not represent an additional compliance burden.

Enquiries

3.16 The revised regime must have clear rules governing the Inland Revenue's right to validate the amount of stamp duty paid. This document proposes that the Inland Revenue will have a right to check details of a notification for any reason during a fixed period. The period will probably be shorter for individual house-buyers than for companies.

3.17 Enquiries are likely to be made primarily on a risk assessed basis. In practice individual house-buyers will rarely be required to submit documents for review after registration.

3.18 At the end of the enquiry period those who notified a liability and have not been contacted will be able to assume that the stamp duty they paid has been accepted as correct. This would be subject to the normal rider that if a "discovery" was made after the standard time period had elapsed, a notice of enquiry could still be issued, at least within a certain period.

3.19 This document envisages that oversight of the revised stamp duty regime would not lie wholly within IR Stamp Taxes. Although accountability for stamp duty would remain with IR Stamp Taxes, where stamp duty issues are identified by the main taxes network, the large business offices or special compliance offices, IR Stamp Taxes may simply give guidance and further consideration as necessary. This approach is in line with the concept (set out in the Review of Links with Business published at the time of the Pre-Budget Report in November 2001) of assigning a single Inland Revenue point of contact for major deals.

3.20 The timescales for stamp duty enquiries will need to be aligned with those for income and corporation tax. This document proposes that, for transactions by businesses, the Inland Revenue should have 3 years following the end of the notification period to raise an enquiry. It is recognised a considerably shorter period will be appropriate for private house-buyers.

3.21 The 3 years is calculated on the basis that, if the transaction takes place at the beginning of a company's accounting period, the Inland Revenue would have two years and eleven months to raise an enquiry under CTSA (assuming returns were submitted on time).

3.22 It is recognised that in complex transactions, there may be genuine uncertainty about the duty calculation. To give businesses certainty this document proposes an option for a post-transaction review of the deal. Some reviews, however, may have to encompass all tax aspects of the deal. We envisage integrating the compliance strategy for stamp duty with the work being undertaken in many other parts of the Inland Revenue.

3.23 In the course of the enquiry the Inland Revenue would need to be able to obtain all the documents relating to the deal that gave rise to the stamp duty, hence the requirement to keep records set out above.

3.24 The full enquiry process would need to allow returns of stamp duty to be amended. The Inland Revenue would also need to be able to make determinations. And, of course, the taxpayer should have the right to apply for the enquiry to be closed, and to appeal against determinations or requests for information.

- ***Views are welcomed on this outline enquiry process.***
- ***Would a facility for post-transaction rulings be beneficial?***

Interest and penalties

3.25 The revised regime will need appropriate powers to encourage compliance and to help tackle non-compliance. One option is to implement a penalty and interest regime, with associated rules to allow determinations and appeals, to follow broadly the existing income and corporation tax provisions. This would mean:

- a penalty for "failure to notify", if the purchaser (or other liable person) fails to notify or notifies late,
- interest to run from the end of the period during which payment is required, until the date of receipt,
- penalties chargeable for late payment or when there is an understatement of duty, i.e. the details provided are not correct, and
- a power for the Inland Revenue to obtain records from other parties, such as the vendor, in certain circumstances.

3.26 Interest and penalties for late notification and payment would run from the same dates for all transactions.

Appeals

3.27 Under the present system all stamp duty appeals go straight to the High Court. This can be a cumbersome procedure and the assumption is that more flexibility would be appreciated.

3.28 The most likely route is for the General or the Special Commissioners to hear stamp duty appeals. The General Commissioners may provide more flexibility and a quicker response for appeals against the more mechanistic elements of the revised regime – such as requests for information, interest and penalties. As the revised charge will contain specialist rules, it seems reasonable that the Special Commissioners might hear appeals against the stamp duty equivalent of determinations.

Registration

3.29 To ensure that, in future, conveyancing is as streamlined as possible, the link between payment of stamp duty and registration by the land registries needs to be preserved. Linking the tax charge to the land registration system ensures that the two processes can be handled seamlessly, maximising efficiency.

3.30 Under the revised regime, however, it would be inconsistent to insist that the land registries had to be satisfied that the correct amount of stamp duty had been paid (as is the case now). This document proposes that the land registries will need to be satisfied that a best estimate of the stamp duty due had been paid at the time, or before, a transaction is registered.

3.31 For transactions where it is anticipated further value might pass after both parties are happy for registration to take place (see paragraph 3.36 to end), only the stamp duty due on the value already passed need be paid to allow registration. At present the full liability on any given transaction must be paid before registration can take place.

Quarterly reporting for companies

3.32 Preserving the link between payment of stamp duty and registration by the land registries suggests reporting details on a transaction by transaction basis. For companies that do not acquire land very often this should not be too onerous. For companies that acquire property interests regularly, the Government is interested to know whether a quarterly

reporting system might help reduce the regulatory impact, particularly for transfers of interests that do not need to be registered with a land registry. Liability to stamp duty would then fall due when the quarterly return was due, and interest and penalties would run from the standard period after that date.

3.33 There seem to be two options – linking with the corporation tax self assessment (CTSA) system, or an independent system. In either case a quarterly reporting option would not be open to all companies because that could cut across preservation of the link to registration. Quarterly reporting would be available to companies that make regular land purchases and that undertake to pay stamp duty. Companies that opted into the quarterly reporting system would not need to prove to the land registries that stamp duty had already been paid before registering the transaction. (And in the longer term, under an electronic conveyancing system, would not be expected to pay stamp duty at the point of registration.) It would be important to ensure, therefore, that the land registries held an up to date list of those companies in the system.

3.34 But a link to the CTSA return might not be beneficial if this scheme is applied on a company by company basis (to match how CTSA operates). It is possible that although a group acquires property regularly, the individual company members of the group might not. Moreover the CTSA return reports profits computed on an annual basis, and it may be prepared by individuals who do not handle property transactions.

3.35 A customised quarterly reporting system, however, could address these issues. The ability to opt into the system would depend on the group's or company's track record. A participating group or company would have to register with the Inland Revenue, providing details of relevant subsidiary companies, and each named company would then appear on the land registries' lists of authorised quarterly-payers. The quarterly return could then cover all relevant transactions, and be supported by a single payment. Joint ventures might also be included in a group return, or dealt with separately.

- ***Would a transaction based reporting system pose business problems for groups that acquire land regularly?***
- ***Would the ability to opt into a quarterly reporting system be welcomed?***
- ***If so, what is the preferred structure of a quarterly reporting system?***

Payment by instalments and contingent payments

3.36 The proposal in this document is that the revised stamp duty charge should normally crystallise when the actual value passes. In some cases, however, value passes in instalments. And sometimes an element of the instalment value may be contingent on some event that has not yet happened at the time when liability first arises. A further complication is that the contract may not mention the possible range of future instalments (referred to here as unascertainable consideration). A single consistent regime is needed to cope with all possibilities. In outline there are two approaches:

- to make a best estimate of the tax due when the first instalment is paid, using rates and structures in force at that time, but amend the calculation if the actual instalments when paid differ from those predicted, or
- for the charge to crystallise as each instalment is paid, with the rate used taking account of the overall anticipated value of the transaction.

Each approach has advantages and disadvantages, explored in more detail below.

Option 1: *"contingency principle"* and subsequent adjustments

3.37 One option for charging instalments and contingent payments under the revised regime would be to preserve the existing rules with modifications. The duty could be adjusted as required by way of refunds to, or further payments from, purchasers so that eventually it accurately reflects the real consideration. This would be a simple approach and, particularly where future payments were of known amounts, could minimise the compliance requirements. It would however raise the following issues:

- what value to ascribe to unascertainable consideration,
- whether current practice on the value taken is appropriate, or whether some form of average or "best estimate" might be substituted for the current use of a minimum or maximum figure,
- what procedures to adopt to ensure the correct adjustments whilst minimising administration (on both sides), and
- appropriate rules for charging interest.

Option 2: charging each time value is passed

3.38 Alternatively, payment could fall due as each instalment or contingent amount actually passed. This would be most consistent with the aim of charging the true value passing, but could be complex to administer, raising the following issues:

- how to establish an appropriate rate/structure to apply to each instalment,
- what to do about any changes to the rates or rate structure between payments,
- the need to estimate the total value of the contract to establish the rate for each instalment,
- what value to ascribe to unascertainable consideration,
- whether to put a limit on the period during which tax on instalments might be paid in this way,
- the need to charge value which, whilst not paid directly to the vendor, is made available to them e.g. via a bank deposit and related loan,
- whether to allow the purchaser to opt for paying the duty "up front", if the chargeable value is known or can be reasonably estimated,
- how to administer future payments – including the need for reminders, interest, a possible need for a notional chargeable date at a future point, and how to address default.

3.39 The consultation will cover these options and issues in more detail.

- ***In the meantime, views are sought on the relative merits of these two outline options, and on other alternatives.***

Chapter 4: Rate structures

4.1 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 to the whole of the chargeable consideration.

4.2 The Government intends to keep the existing rate structure for stamp duty.

Disadvantaged areas

4.3 The exemption for land in disadvantaged areas was implemented on 30 November 2001 for transactions up to £150,000. In effect this is an increase of the threshold for purchases of land in those areas.

4.4 The Government is currently introducing a definition of "residential" property for the purposes of the relief for disadvantaged areas, so that in due course the threshold can be significantly raised, or abolished, for land that is not classified as residential property.

Grant of new leases

4.5 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.

4.6 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.

4.7 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.

4.8 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.

4.9 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.

4.10 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.

4.11 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.

412 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%).

4.13 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.

4.14 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.

4.15 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.

4.16 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.

Chapter 5: Reliefs and other provisions

5.1 Development of the revised regime will involve careful consideration of all the existing stamp duty provisions. The working assumption is that all reliefs and rules will be carried forward into the new regime unless they are no longer needed or could be exploited to undermine stamp duty.

5.2 This chapter looks at some key reliefs in the existing stamp duty regime and explores some other provisions.

Existing reliefs

5.3 Transfers to particular organisations, such as charities, the Crown, and Government bodies, will continue to be exempt in the revised regime, as will transfers that are unencumbered gifts. The special arrangements for shared ownership transactions and for tenants purchasing under rent to mortgage schemes will also be preserved.

5.4 Group relief that enables properties to be moved between companies within a group without a stamp duty charge is an important feature of the present regime and will be preserved in the new one. But the rules will be tightened to ensure that group relief cannot be used in schemes of avoidance.

5.5 Other reliefs to support group reconstructions have not changed significantly for some time. These reliefs will be examined carefully because of their links to stamp duty on shares and the capital gains tax changes to reconstruction relief.

- ***Views are sought on the appropriate scope for a reconstruction relief.***

5.6 The relief for property in disadvantaged areas will be carried forward into the revised stamp duty regime.

New reliefs

5.7 The modernisation of stamp duty may offer an opportunity to consider whether any new reliefs should be introduced. For example, stamp duty has been an issue for acquisitions of freeholds under the 1993 Leasehold Reform, Housing and Urban Development Act. The Inland Revenue and the Department of Transport, Local Government and the Regions will work together to identify whether this issue can be successfully addressed under the revised regime.

- ***Views are sought on other reliefs that would meet particular needs in the revised regime while ensuring that stamp duty applies fairly.***

Other provisions

5.8 There are many anti-avoidance rules in the existing regime. Those necessary in the revised regime will be carried forward, however some may no longer be needed, perhaps because of changes to the ways property transactions are carried out.

- ***Views are welcomed on anti-avoidance rules that are no longer needed.***

5.9 The Government is concerned about the significant growth of artificial schemes to avoid stamp duty and wants to develop a mechanism for the revised regime that will ensure that new schemes of avoidance can be stopped as they emerge.

5.10 The link between payment of stamp duty and registration of documents will be preserved under the revised regime. But is not yet clear whether the rule that prevents unstamped documents being used in Court proceedings needs to be replicated.

Chapter 6: Complex commercial arrangements

6.1 The Government recognises that in developing a sound basis for the revised stamp duty regime careful consideration must be given to how it will apply to complex arrangements, for instance large projects to develop land. The purpose of this chapter is to identify the main areas where the new regime is likely to impact on these arrangements. Consultation will provide the opportunity for detailed discussion and where necessary further technical notes will be prepared.

Partnerships and joint ventures

6.2 Many arrangements to develop or invest in property involve partnerships. Under the present stamp duty regime the transfer of any interest in a partnership comes within the scope of stamp duty. Such a broad rule may not be necessary in the revised regime but as a general principle, the Government will still expect to see a charge arising when the transfer of a share in a partnership represents the transfer of a significant share in an interest in UK land.

6.3 The policy for limited partnerships and limited liability partnerships (LLPs) has been to treat them no differently from other sorts of partnerships. The consultation should consider whether this is the right approach for the revised regime given the increasing use of limited partnerships to develop and invest in property.

- ***Should there be different treatment for partnerships, limited partnerships and LLPs?***
- ***Where partnerships acquire assets, is there a need for special rules to establish who is liable to what amount of stamp duty?***
- ***Are similar special rules needed for joint ventures?***

Development arrangements

6.4 Very large developments may involve a number of key players, each with a particular interest. The revised regime must be able to cater for these arrangements. In designing the revised regime, the working assumption is that stamp duty should be payable only when an interest in land to be developed is acquired, and when the development is sold or let. It is not the Government's intention to bring within stamp duty the costs of development or refurbishment where that involves a temporary transfer of an interest in the land.

6.5 The Government wants to work with property sector experts to establish a fair way to deal with these developments under the revised regime.

- ***Views are welcomed on the issues that might arise for large development projects.***

Raising finance using property as security

6.6 There has been a trend in recent years for groups to raise finance by issuing bonds secured on their interests in property portfolios. The Government is keen to encourage UK business to obtain access to capital in the most efficient ways available and it is intended that the revised regime should be flexible enough to facilitate arrangements of this kind. The Inland Revenue proposes to consult on what reliefs or other arrangements can be made within the framework of the revised regime to assist with financing transactions. However, an

overriding principle must be that where the economic effect of the arrangement is that the equity in property has left the borrowing company or group, a charge to stamp duty will continue to apply.

Other

6.7 There will be a range of particular issues that need specific consideration, for example the use of non-UK registered companies to invest in UK property. The Government would welcome issues not addressed in this consultation document being raised as soon as possible.

- ***What other complex commercial issues are there where specific consideration would be helpful?***

Chapter 7: Taking change forward

7.1 This chapter provides more information about how the consultation process will develop over the next year, and the probable legislative and implementation timetable. It also gives some background about the work on electronic conveyancing processes being undertaken by HM Land Registry and the Registers of Scotland, and how that fits with the stamp duty changes.

Consultation

7.2 As well as welcoming written responses to this document, the Inland Revenue will shortly establish a consultative steering committee with delegates from the property sector, banking, the tax and legal professions and other Government departments.

7.3 The consultation arrangements will include sub-groups to consider various sectors and issues in detail. This approach will continue through to implementation, and possibly beyond. During the consultation period further discussion papers will be prepared and the aim is to publish draft legislation later this year.

7.4 The Inland Revenue will also be happy to meet with representative organisations on a one-to-one basis if that would be helpful. Once the framework for the revised regime is clearer there will be a series of presentations in various locations.

7.5 The Inland Revenue code of practice on consultation is reproduced in annex 5.

Legislation and implementation

7.6 The Government plans to introduce legislation for the revised stamp duty regime in Finance Bill 2003, with supporting regulations in due course, with a view to the revised regime taking effect later that year.

7.7 Special provisions will be included in the legislation to ensure that the same transaction is not caught twice within the existing and the revised regimes.

Electronic conveyancing processes

7.8 Over the last few years, HM Land Registry has been progressively working towards the development of an electronic conveyancing system. A consultative document will be published very shortly.

7.9 The Registers of Scotland plans to introduce, within the next few years, "Automated Registration of Title to Land" for certain types of applications for registration, and electronic lodgement of deeds. Longer-term, it is considered that these initiatives will facilitate the introduction of full electronic conveyancing in Scotland. The Keeper of the Registers intends to issue a consultative document later this year.

7.10 The assumption is that once these systems are up and running they will be integrated with Inland Revenue stamp duty systems. As a result, using those systems should satisfy all notification and payment requirements arising under stamp duty statute. In the fullness of time the Inland Revenue's unique stamping presses will stamp no more. The only contact the purchaser need have with the Inland Revenue subsequently, therefore, would be to confirm the calculation of stamp duty for a specific transaction (if desired) or if a transaction was selected for checking as part of the Inland Revenue compliance processes. To achieve this objective the Inland Revenue is a key stakeholder in the ongoing projects of both HM Land Registry and the Registers of Scotland.

Annexes

Annex 1: Outline of the existing stamp duty regime

Scope of stamp duty

Stamp duty is payable in respect of documents that transfer property. It is paid most frequently on sales and leases of land and buildings, and transfers of shares. (In fact, stamp duty reserve tax (SDRT) is normally paid on share transfers. This is collected through the CREST system. SDRT was the first tax administered electronically by the Inland Revenue).

Other types of property are also within the scope of stamp duty, for example receivables. Transfers of certain types of property are specifically exempt from stamp duty. The main exemptions include transfers to charities, transfers to registered social landlords, transfers of intellectual property, transfers within groups of companies, and transfers up to the value of £150k in designated disadvantaged areas.

Rates and thresholds

Since 1997 there has been a three-rate structure with exemption for transfers up to a price of £60,000. The current structure of rates and thresholds is:

Price (£000)	Rate (%)
Up to 60	0
Over 60 up to 250	1
Over 250 up to 500	3
Over 500	4

The rate applies to the full consideration. For example the duty on a sale for £100,000 is £1,000, ie 1% of the full price including the first £60,000. The same rules apply to the price paid on an assignment of an existing lease.

New leases

Different rules apply for new leases. There are separate charges on any premium and the annual rent. The charge on a premium is 1% to 4% and on the rent it is a percentage of the average annual rent, depending on the term of the lease. The rates range from 1% for a lease of 7 years or less, to 24%, for a lease of more than 100 years. Premiums of £60,000 or less qualify for exemption provided the annual rent is below a certain level (currently £600).

Liability and enforcement

Stamp duty law does not specify who is liable to pay the duty although in practice it is usually the purchaser. The land registries will not register a transfer of title to a property without a duly stamped transfer document.

Unstamped documents are not valid as evidence in civil proceedings

Late payment – interest and penalties

Documents can be presented for stamping up to 30 days after they have been executed. After 30 days, interest is charged, provided the interest due exceeds £25.

In addition, where a document executed in the UK is presented for stamping more than 30 days after execution a penalty may be due. Similarly, a penalty may be due where a document executed outside the UK but nonetheless within the scope of stamp duty is brought into the UK and not stamped within 30 days. All penalties are subject to mitigation, and none are due if there is reasonable excuse for delay.

Appeals

A procedure called adjudication is commonly used for settling stamp duty disputes. It involves the formal expression of an opinion on the document by the Inland Revenue. If the dispute persists, appeal is by way of case stated to the High Court (Court of Session in Scotland).

Main legislation

Stamp duty is charged on conveyances and transfers on sale of land and buildings by paragraph 1 of Schedule 13 to the Finance Act 1999, and on new leases by paragraph 10 of that Schedule.

Annex 2: Notification under the revised regime

Under the revised regime a standard form will be completed. At present it is envisaged that the following information will have to be provided:

- Address of property
- Title number of property
- Date of agreement or contract
- Date when purchaser considers liability to duty arises
- Consideration or value for money or money's worth (as extended)
- Amount of stamp duty to be paid at time of notification
- Transferor's name and address, and whether acting as a trustee or nominee
- Transferor's solicitor
- Transferee, and whether acting as a trustee or nominee
- Transferee's solicitor
- Transferee's intended address
- Declaration by purchaser, including statement about connected persons and whether part of a related series of transactions.

And the following would need to be disclosed if relevant:

- Date of completion
- If transferor is a company, its registered number (if it has one) and its tax reference
- If transferee is a company, its registered number (if it has one) and its tax reference
- If transferee is a charity, its registered number and its tax reference (if it has them)
- Total value of purchase set out in contract/agreement (if this is in excess of chargeable consideration)
- Projected instalments (of further consideration), stamp duty amounts and projected due dates
- Projected contingent payments of further consideration (reasons, amounts and dates).

In some cases in may be easier to provide certain additional documents.

Annex 3: Partial Regulatory Impact Assessment (RIA)

Introduction

1. This partial regulatory impact assessment (RIA) considers the costs and benefits of the proposed modernisation of stamp duty, outlined in the consultative document Modernising Stamp Duty on land and buildings in the UK. Subject to the results of consultation, a further version will accompany consultation on draft clauses when these are prepared, and a final RIA will be produced prior to implementation.

2. This document makes an initial assessment of the impact of modernising stamp duty as the proposals are envisaged at this stage. As the proposals are refined, and in the light of responses to this document, the assessment and underlying assumptions may change. This will be reflected in the final regulatory impact assessment.

3. Stamp duty modernisation has the potential to affect directly any individuals or businesses, and their agents, who undertake transactions in certain types of property (predominantly land and buildings). Individual house-buyers, however, should experience little immediate impact from the changes – and a beneficial impact over time as the proposals pave the way for faster conveyancing once electronic systems are introduced. The proposals for modernising stamp duty are wide-ranging, and will therefore necessarily imply a new body of legislation and supporting information. The Government believes however that this is in proportion to the need, outlined in paragraphs 4 and 5 below, and that the result should be a more transparent, consistent and clearly targeted tax.

Purpose and intended effect

4. Stamp duty is currently (in broad terms) a tax on documents that transfer property.

The objectives of modernising stamp duty are:

- **fairness**: the Government is concerned about the increasing extent to which stamp duty is being avoided. The use of artificial arrangements to avoid stamp duty on commercial property transactions is unfair to the compliant majority, particularly small businesses acquiring premises and individuals purchasing their own homes;
- **e-business**: to create a regime that supports the Government's e-business agenda, and in particular the introduction of electronic conveyancing, which will make the house-buying process simpler, quicker and more efficient; and
- **modernisation**: to create a legal framework for stamp duty in line with more modern taxes, providing a level playing field and creating a charge that is based more on the substance of transactions.

The intended effect of the revised regime is therefore an e-enabled, streamlined and clearer charge, which applies fairly to all relevant transactions.

Risks

5. The objectives set out in paragraph 4 must be achieved. Modernisation will address the risks that could arise to the stamp duty base and to customers if the tax does not keep up with the development of electronic systems for conveyancing, and if some property transfers are allowed to circumvent the charge.

6. There will inevitably be risks in bringing in a modernised regime. The intention is to bring in the changes as quickly as possible, subject to ensuring customers are given sufficient time and opportunity to understand the new rules. The interaction between stamp offices and the land registry bodies will need to be carefully managed, particularly during the transition period between stamp duty modernisation and full electronic systems for conveyancing. The need to heed commercial practice, in order to avoid the risk of "tax traps" such as a charge arising at more than one stage of a complex transaction, is noted.

7. The Government is convinced, however, that the changes necessary to "e-enable" stamp duty, and to make the tax fairer by improving compliance, will be most effective in the context of a full review. Changes to the current regime, rather than a full modernisation, would risk increasing not resolving anomalies. The necessary changes will be partly procedural, but can only be achieved through changes to primary legislation.

Proposals

8. Detailed proposals for change are set out in the consultative document Modernising Stamp Duty on land and buildings in the UK. Some of the key proposals are as follows:

- to limit the scope of the charge to transfers of interests in UK land and buildings;
- the charge to be triggered by the passing of value;
- a standard notification and payment procedure, suitable for a transaction-based tax, backed up with appropriate compliance powers, interest and penalties;
- the purchaser or lessee to be responsible for notification and liable for payment;
- the continuation of the requirement for stamp duty to be accounted for prior to registration of title to property; and
- a review of the charge on new leases.

Stamp duty exemption for goodwill

9. In Budget 2002, the Chancellor announced a stamp duty exemption for all transfers of goodwill. In the main this measure benefits individuals and companies buying businesses, who will no longer have to pay stamp duty on any goodwill element. The exemption is consistent with the proposed direction of stamp duty modernisation, but was enacted prior to consultation in order to put goodwill on a consistent footing with intellectual property and to provide benefits to business without delay. No costs to customers are anticipated from this measure, and assessment of the impact has therefore been incorporated into this partial RIA.

Benefits

10. The precise benefits of modernisation will depend on the detailed proposals adopted. The benefits, however, that will arise from meeting the objectives in paragraph 4 are considerable.

A fairer regime

11. Modernised stamp duty should ensure that all relevant transactions are charged and stamp duty is applied consistently. Under the current system, some larger commercial deals in particular incur significant consulting fees in order to "side-step" the charge.

12. Under the proposals for consultation, customers will have to provide some details via a standard notification procedure, but will no longer have to submit full documentation of transfers in the first instance. This will eliminate the problem of delayed returns or lost

documents. Currently, stamp offices receive around 600 contacts per month concerning delays. Most are resolved, but around 100 per annum are passed to the IR Stamp Taxes complaints manager. Removing the need for this kind of contact will therefore reduce administrative time and cost, benefiting both stamp offices and customers.

An e-enabled stamp duty

13. Customers will benefit from the option to notify transactions and make payments electronically if they wish.

14. Conveyancing of property will be speeded up by the introduction of electronic systems and stamp duty changes pave the way for this development of electronic conveyancing. Payment and notification of stamp duty will be possible through these systems in the longer term. Ultimately, this will mean that duplication is minimised and customers and their agents can process property transfers through a single system and single point of approach to Government.

15. The consultative document anticipates that the proposed notification requirements and new IT systems will enable more effective collection of information about the property market, for use by many Government departments and for release to the public and the property industry.

16. The changes will enable IR Stamp Taxes to offer provision of 100% of services electronically by 2005, in accordance with the Government target.

A more modern, transparent and focused tax

17. A full review of stamp duty, which was last consolidated in legislation in 1891, will help Government and practitioners alike by providing the opportunity to consolidate and to clarify the charge.

18. It is proposed that the scope of stamp duty 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 are currently chargeable. The abolition of stamp duty on receivables should facilitate debt financing and debt securitisation, assisting businesses to raise finance by these means.

19. These changes to scope will remove the wide definition of "property" in the current system. At present, this can lead to anomalies and confusion, for instance where there is a theoretical charge on some transactions but where relevant documents are habitually not presented for stamping. Changes to scope will therefore enable a focused charge that is clearly understood and effectively enforced. With a clearly defined scope, new compliance procedures should be able to operate effectively and create a level playing field for relevant transactions.

20. The existing fixed duty of £5 on certain documents not on sale, for instance declarations of trust, will be removed. This will be a saving for customers, though notification of these transactions may still be required.

Views are welcomed from customers and their representatives on the benefits they expect (or would like) to see from stamp duty modernisation, and to help quantify the benefits that may accrue. In particular:

- ***the benefits of an electronic communication channel – how often and under what circumstances would such a channel be useful?***
- ***what kind of property market information would be most useful and how might it be beneficial?***

- ***what level of administrative savings might be achieved, for instance through not having to submit documents in the first instance, or through a reduced requirement for complex tax advice if the stamp duty charge is clearly focused and enforced?***

21. The land registries will be preparing separate RIAs to help establish the wider benefits of electronic conveyancing.

Revenue effects

22. The modernisation proposals directly affect only the way in which tax is paid on property transfers, not the form of the transfers themselves. Overall, the proposals are intended to be revenue raising through improved compliance, and there will therefore be a direct tax cost to some customers.

23. The modernised regime will enforce stamp duty on deals that would previously have side-stepped the charge. This will have an impact on the margins of gain from such transactions, and we expect a behavioural impact in that some may no longer be found viable. We estimate that in the long run up to 5% of all commercial property deals could be affected in this way. In turn, slightly fewer transactions mean that the yield increase we anticipate is slightly less. The current estimate of yield increase from modernisation is £400 million in the first full year, rising to £600 million thereafter in parallel with an overall expected yield increase.

24. IR Stamp Taxes implementation costs and other costs to the Revenue should be offset by increased yield. Besides the direct revenue effects, there will be some implementation and compliance costs for customers - see relevant sections below.

Implementation costs

25 It is anticipated there will be some administrative costs both for customers and for the Revenue. These will largely be non-recurrent costs associated with adjusting to a modernised duty.

IR Stamp Taxes implementation costs

26 A new IT system will be required by stamp offices, for use prior to, and ultimately to interface with, the land registries' new electronic systems. The current estimated cost for this is £2.8 million.

27 Stamp office staff will require training to familiarise them with the revised regime, and with changes to their roles. The current estimated costs are £75,000.

28 Costs will be incurred in publicising the changes and providing information and guidance. The current estimated costs for publicity are £10,000. It is also intended to launch joint publicity initiatives with the land registries in due course.

Customer implementation costs

29. ***Views from customers and legal advisers on the likely costs to them of understanding the new legislation and setting up systems for the revised regime are welcomed, in particular:***

- ***costs of retraining for independent and in-house legal advisers,***
- ***costs of adapting to a standard notification form, and***
- ***any additional IT costs that may accrue. These are not expected to be significant, as the stamp duty measures aim to enable, not enforce, electronic contact.***

Compliance costs

30. As with the benefits, the compliance costs of the measure will depend on the exact proposals to be adopted. A number of areas of potential impact are however identified below.

Residential customers

31. During 2001-02, stamp duty was collected on nearly 1.5 million residential transactions. It is not expected that a modernised duty, at current rates, will increase compliance costs for the average purchase of residential property - indeed the revised regime is being designed to minimise this possibility. In the medium to long term, the availability of electronic conveyancing and the ability for stamp duty to be paid electronically may reduce compliance costs.

32. In cases where an enquiry is opened, there may be some costs involved in providing the required information to the Revenue. Initially, however, this will only involve provision of the documents currently required prior to stamping (ultimately replaced under the new rules with a standard notification). Compliant residential customers should therefore not experience a significant burden in complying with enquiries.

33. The revised regime will involve a requirement to keep relevant documents for a minimum period. It is not envisaged however that this will increase costs for customers or their representatives, as documents relating to property ownership are likely to be retained in any case.

- ***Views are sought from customers and their representatives on any possible compliance costs that may accrue from modernising stamp duty on residential transactions.***

Charities

34. Stamp duty relief on transfers by charities, and for other types of currently exempt transfer, are expected to continue under the revised regime, so no new costs should result.

Businesses

35. It is very difficult to estimate the costs of stamp duty modernisation to a "typical" business, particularly as the charge is only incurred on an occasional basis when property is acquired. It not thought that significantly increased costs will attach to transfers on which stamp duty would have been paid under the existing regime. Behavioural effects are likely to be as important as direct compliance costs. The following paragraphs identify some areas of potential impact.

36. There will be some costs involved in notifying stamp duty liability, in accordance with the proposed rules. The provision of the required information is not considered to be substantially more onerous than the current requirements, and as mentioned above customers may benefit from not having to submit their documents.

- ***Views are sought on the level of these costs (if any), and in particular the degree to which they might be mitigated by the use of a quarterly reporting system as outlined in chapter 3 of the consultative document.***

37. Costs may also arise in complying with Revenue enquiries. As on the residential side, the requirement to keep documents or to produce them in the event of an enquiry should not be onerous for compliant customers. Commercial transactions are however more likely to be complex, and enquiries may be more protracted as a result.

- ***Businesses and their representatives are asked to help in quantifying the likely costs in this area, and the possible reduction in these costs if a post-transaction ruling were available to increase certainty.***

38. As mentioned in paragraph 23 above, a behavioural impact is expected on deals where stamp duty is newly enforced (where it would be side-stepped under the existing regime), meaning that in the long run around 5% of all commercial property deals may not be found viable. Where the newly enforced charge ultimately falls will be dependent on the relative market power of suppliers and users of commercial property. The impact of stamp duty changes on prices and on the number of property transactions will be kept under review.

39. ***Information on any other transaction costs of transferring property, that may influence the impact of modernising stamp duty, would be welcome. In particular:***

- ***fees of estate agents, surveyors or other property advisors,***
- ***costs of legal advice,***
- ***set up costs of necessary financial instruments, and***
- ***other costs (e.g. search fees).***

In providing such information, it would be helpful if the level of costs could be linked to the value of property transferred, and whether this value is below £1m, between £1m and £10m, or over £10m.

Changes to stamp duty on new leases

40. As outlined in the consultative document, changes are proposed to the structure and level of stamp duty on new leases to ensure a charge that corresponds to a stamp duty charge on a transfer of similar value. A further discussion paper is intended, as the Government realise the impact of the proposals may be considerable. Assessment of the impact will be ongoing. In broad terms:

- short residential leases, and long residential leases where the major part of payment is a premium akin to a freehold purchase, should not be adversely affected. Indeed short term residential leases may be excluded from the charge.
- ***views would be welcome to help quantify the potential benefits of excluding short term residential leases.***
- there is likely to be a greater potential impact on some long rental leases, and on the commercial lease market. This impact can only be considered in more detail once firmer options have been identified.

Impact on Small Business

41. The impact on small businesses is not expected to be disproportionate. **Views from small businesses are welcomed, however, through the consultation process.** The tax saving to small businesses from the stamp duty exemption for goodwill is estimated to be in the order of £5 million per annum.

Consultation

42. The Inland Revenue intends to establish a consultative committee structure with delegates from the property sector, banking, the tax and legal professions and other Government departments. The opportunity for one-to-one meetings will also be available to representative organisations.

43. Consultation covers both the proposals for stamp duty modernisation, as set out in the consultative document Modernising Stamp Duty on land and buildings in the UK, and on the impact of the changes as outlined in this partial RIA.

- ***Views are sought on any further areas of impact arising from the modernisation of stamp duty on land and buildings in the UK.***

44. Subject to the outcomes of the current consultation, draft clauses for consideration are expected to be published later this year. Technical notes may also be issued on specific points.

45. A continuing dialogue is envisaged to ensure the smoothest possible implementation and to address any post-implementation issues that may arise.

Contact Point

Helen M. Smith
IR Stamp Taxes
Room 113, New Wing
Somerset House
Strand
London
WC2R 1LB
msd.stampscondoc@ir.gsi.gov.uk

Annex 4: Summary of consultation points

page	*paragraph*	*point for consultation*
13	2.15	Views are sought on the proposed scope of the revised charge and on whether there are categories of land where specific exclusions might be appropriate.
14	2.20 and 2.21	What is the possible impact on the commercial arrangements for large development projects of the proposals regarding chargeable consideration?
		Are there any other issues arising from measuring the chargeable value in terms of money or money's worth, extended as proposed, or in the proposals for valuation of certain types of consideration?
14	2.23	In what circumstances might a relief for exchanges be appropriate?
		What is the likely impact on pooling interests in a development site if exchanges are charged?
15	2.31	Views are sought on whether and to what extent short term leases should be excluded from charge.
		To what extent are commercial leases granted for periods of less than three years?
15	2.32	In what circumstances might there be difficulties arising from the use of agreements to lease in practice?
19	3.7	Views are sought on how to ensure that a transaction-based charge – will in most cases crystallise completion, as now, rather than where a deposit is paid.
19	3.10 and 3.12	Views are sought on the proposed notification and payment requirements.
		How could a possible need for pre-transaction rulings fit with the regime described, bearing in mind it would not be possible to review all transactions in this way?
20	3.24	Views are welcomed on this outline enquiry process.
		Would a facility for post-transaction rulings be beneficial?
22	3.35	Would a transaction based reporting system pose business problems for groups that acquire land regularly?
		Would the ability to opt into a quarterly reporting system be welcomed?
		If so, what is the preferred structure of a quarterly reporting system?

page	*paragraph*	*point for consultation*
23	3.39	Views are sought on the relative merits of the two outline options for charging contingent payments and payment by instalment, and on other alternatives.
27	5.5	Views are sought on the appropriate scope for a reconstruction relief.
27	5.7	Views are sought on other reliefs that would meet particular needs in the revised regime while ensuring that stamp duty applies fairly.
27	5.8	Views are welcomed on anti-avoidance rules that are no longer needed.
29	6.3	Should there be different treatment under the revised stamp duty regime for partnerships, limited partnerships and limited liability partnerships?
		Where partnerships acquire assets, is there a need for special rules to establish who is liable to what amount of stamp duty?
		Are similar special rules needed for joint ventures?
29	6.5	Views are welcomed on the treatment of development arrangements under the revised stamp duty regime.
30	6.7	What other complex commercial issues are there where specific consideration would be helpful?

Points for consultation within the partial RIA:

page	*paragraph*	*point for consultation*
38	20	Views from customers and their representatives on the benefits they expect (or would like) to see from stamp duty modernisation, and to help quantify the benefits that may accrue are welcomed. In particular: • the benefits of an electronic communication channel – how often and under what circumstances would such a channel be useful? • what kind of property market information would be most useful and how might it be beneficial? • what level of administrative savings might be achieved, for instance through not having to submit documents in the first instance, or through a reduced requirement for complex tax advice if the stamp duty charge is clearly focused and enforced?
39	29	Views from customers and legal advisers on the likely costs to them of understanding the new legislation and setting up systems for the revised regime are welcomed, in particular: • costs of retraining for independent and in-house legal advisers, • costs of adapting to a standard notification form, and • any additional IT costs that may accrue.
40	33	Views are sought from customers and their representatives on any possible compliance costs that may accrue from modernising stamp duty on residential transactions.
40	36	Views are sought on the possible costs to businesses of notification, and in particular the degree to which they might be mitigated by the use of a quarterly reporting system as outlined in chapter 3 of the consultative document.
41	37	Businesses and their representatives are asked to help in quantifying the likely costs arising from enquiries, and the possible reduction in these costs if a post-transaction ruling were available to increase certainty.
41	39	Information on any other transaction costs of transferring property, that may influence the impact of modernising stamp duty, would be welcome. In particular: • fees of estate agents, surveyors or other property advisors, • costs of legal advice, • set up costs of necessary financial instruments, and • other costs (e.g. search fees). It would be helpful if this could be linked to the value of property transferred, where this is below £1m, between £1m and £10m, or over £10m.

page	*Paragraph*	*point for consultation*
41	40	Views would be welcome to help quantify the potential benefits of excluding short term residential leases.
41	41	Views are welcomed on any impact to small businesses.
42	43	Views are sought on any further areas of impact arising from the modernisation of stamp duty on land and buildings in the UK.

Annex 5: Code of practice on written consultation

consultation criteria

1. Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

2. It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

3. A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.

4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.

5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.

7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

The Inland Revenue confirms that, where possible, these consultation criteria have and will continue to be followed.