

Market News Flash October 2018 - Additional SDLT for Foreign Buyers.

COMMENTARY:

Yet another proposed tax for the UK housing market but this one may be illegal.

Current Legislation protects against discrimination when buying or renting property.

We see a low probability of implementation.

This weekend the Prime Minister maintained that she would seek to tax property transactions for Foreign Nationals who do not pay tax in the United Kingdom at an additional rate, in excess of current SDLT thresholds.

We examine the idea and the consequences and believe that, at this stage, the policy has a low probability of implementation:

In the UK, if one seeks to treat people differently due to their race, one would be in breach of the Equality Act 2010. *Race* is defined as colour, nationality ethnic or national origin and *Race* along with another 8 items are deemed to be “protected characteristics”.

Further, the Government (www.gov.uk/discrimination-your-rights) even protects against discrimination “*when buying or renting property*”.

Seeking to tax foreign buyers of UK property is de facto “*treating someone with a protected characteristic less favourably than others*”. Moreover, these rights are further protected by the Racial Equality Directive 2000/43/EC.

So, as we understand, whilst these characteristics are protected by the EU, implementation will require that not only does the UK leave the EU (so nothing for at least the next 6 months) but also that ECJ oversight is also greatly reduced (an area of current negotiation). In addition to this, it would also seem that the UK Equality Act 2010 will have to be amended. The latter seems quite a long-shot for a minority government as the Tories have quite enough on their plate for the time being, for them to start introducing nationalistic and discriminatory legislation into the statute books.

Notwithstanding this, we feel that the idea is ill-conceived: As (if?) we go through Brexit the UK will need an influx of foreign investment – and property transactions with foreign buyers not only provide this but they also stimulate the economy via secondary services (solicitors, removal companies, builders, architects, local shops and services etc... – and yes, even Estate Agents!)

We also believe that the tax status of a foreign buyer, being key to the tax being triggered, is fraught with further problems: Does tax on buy-to-let income qualify? Does a Tier 1 Visa investor qualify as they will be paying tax on their investment income?

We see a low probability of implementation.

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