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SDLT Additional Properties Consultation
Enterprise and Property Tax Team
HM Treasury
1 Horse Guards Road
London
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To whom it may concern,

**Re: Consultation on Higher rates of Stamp Duty Land
Tax (SDLT) on purchases of additional residential
properties**

Please find overleaf our response to this consultation, which I trust will receive your consideration.

I would be more than happy to answer any queries arising from our consultation response.

Otherwise, I look forward to reviewing the outcome in due course.

Yours faithfully,

Robert Morris
on behalf of Friendly Housing Action

Background

Friendly Housing Action represents small, fully mutual housing co-operatives that are managed by general meeting (an explanation of these terms is given below). This response to the Government consultation on *Higher rates of Stamp Duty Land Tax (SDLT) on purchases of additional residential properties* concerns itself with the potential impact on the organisations we represent. As such, we have not responded to all the questions asked in the consultation.

The co-operative housing sector in the UK is small but long-established. Some housing co-operatives are registered social landlords, whilst others are not; it is this latter type that we are representing. At present, fully mutual housing co-operatives that are not registered social landlords have no special treatment for SDLT purposes, and thus any new legislation would, without explicit provision, treat such organisations identically to other incorporated entities that own residential property.

Fully mutual housing co-operatives, also known as co-operative housing associations, are a specific form of legal entity, registered as co-operative societies (formerly known as Industrial and Provident Societies) with the Financial Conduct Authority in its capacity as the registrar for mutual societies. Fully mutual housing co-operatives have, by definition, rules that require membership of the society to be restricted to the residents of its property, and reciprocally, that all residents must be members. This ensures that the governance of the society ultimately rests exclusively with those who are housed by it.

Fully mutual housing co-operatives, as a specific form of legal entity, have previously received specific provision in legislation at several points, such as:

- Housing Associations Act 1985, s.1(2), which provides the basic definition of a fully mutual co-operative housing association;
- Corporation Tax Act 2010, s.642-649, provides tax relief from rental income received into a fully mutual housing co-op, and also a disregarding of mortgage interest paid by it (this is because fully mutual housing co-ops are not-for-profit organisations);
- Housing Act 2004, Schedule 14 para 2A (inserted by Localism Act 2011 s.185), which provides that fully mutual housing co-ops managed by general meeting do not have to apply for an HMO license under the 2004 Act

The last of these three specifically applies to co-operatives managed by general meeting – that is to say, where all members are expected to participate in every decision-making meeting of the co-operative – as this form of governance is more inclusive and closer to the joint owner-occupier status that the co-operative is functioning as an equivalent to. (This is in contrast to larger housing co-operatives that elect a subset of their members as a committee to run the organisation on behalf of the others, usually for a year at a time).

It should be noted that the Housing Act 2004, as originally enacted, inadvertently included fully mutual housing co-operatives in the HMO licensing system; when this was subsequently brought to the attention of the relevant Minister an amendment was required to rectify the situation. We hope that due consideration of this consultation response will enable a repeat of that process to be avoided.

Question 17

Do any specific kinds of collective investment vehicle or other non-individuals need to be treated differently to companies?

We would suggest that co-operative ownership of housing is a tenure the Government ought to consider encouraging – by classifying it along with owner-occupation for SDLT purposes – rather than discouraging, by seeing it inadvertently receiving the same treatment as Buy To Let landlords.

This form of housing tenure provides many of the benefits of home ownership – but in a collective, not individual way. Co-operative members take responsibility for the maintenance/improvement and finances of their homes, and in this sense are in the same position as owner-occupiers; the difference being their homes are owned via an intermediary entity – the co-operative society – rather than being registered in their own names directly.

Each co-operative member is occupying their co-op-owned home as their principal private residence (commonly, fully mutual housing co-operatives have this requirement written into their rules). When co-operatives purchase second and subsequent properties, this would be for provision of housing for additional members – again, as their principal private residences – not 'second homes' for existing members.

The concept of a fully mutual housing co-operative managed by general meeting is well-defined in law – indeed reference could be made in the new legislation enacting the proposed SDLT changes to one of the existing definitions. An additional clause could require the co-operative to have a 'no second homes' rule if this was felt necessary.

This legal form is specific, and tightly-defined in terms of its purpose and the conditions under which such societies must operate. Registration with the Financial Conduct Authority provides greater oversight than normal companies registered at Companies House, in terms of compliance with the requirements of being registered as a co-operative society (for example, the secretary must make a declaration on each annual return about the activities of the society and benefits delivered to its membership). We therefore think it unlikely that an exemption for fully mutual housing co-operative from the proposed increased SDLT rates would be misused as a device to avoid the higher SDLT, due to this additional complexity and restriction in setting up and running such an organisation.

Therefore, we propose that fully mutual housing co-operatives should be exempt from the higher rates of SDLT, in the same way as individual owner-occupiers.