

Insights

UK GOVERNMENT TO REFORM STAMP DUTY LAND TAX ON MIXED-PROPERTY ACQUISITIONS AND MULTIPLE ACQUISITIONS OF DWELLINGS

Dec 10, 2021

SUMMARY

The government is proposing to change the way SDLT is calculated on mixed-property purchases (where residential and non-residential elements are acquired) and on the scope of multiple dwellings relief (**MDR**). It is offering a range of proposals to stop what they perceive as abuse under the current rules. The government will subsequently consult on a specific reform proposal. Change is not expected in Finance Act 2022.

The difference between commercial (up to 5%) and residential rates (up to 17%) is now significant which is no doubt why there has been an increased focus on ways to mitigate this tax burden.

The changes in their current form will have a wider effect than just targeting abusive transactions and may well affect transactions where there is no abuse (perceived or otherwise). It is arguable that some of the examples of 'abuse' are actually just the correct analysis of the law as it stands. This is no doubt why HMRC have realised they need to change the law (rather than just issue guidance) if they are to achieve the desired result of taxing residential transactions at the higher rates.

GOVERNMENT TO STOP ABUSE OF MIXED-PROPERTY ACQUISITION RULE

In relation to mixed-use acquisitions of commercial and residential property, it is currently possible to pay SDLT at the commercial rates even where only a small proportion of a property is commercial. Given the material difference in tax charges, this has prompted some taxpayers to seek commercial rates on buying their own homes by including token amounts of non-residential property. HMRC give some examples of what they consider unreasonable interpretations of the current rules, including buyers claiming their home was a mixed-property transaction if they leased their garage (which was part of a semi-detached property in an ordinary residential suburb) to a company for storage.

However, there is no suggestion that the new rule will be a targeted anti-avoidance rule or that a tax avoidance motive will be required for the new rule to apply.

The government is looking at two alternatives to make the rules fairer:

Apportionment - the residential portion of a mixed-property purchase would be taxed at the residential rates and the remaining, commercial portion of a purchase would be taxed at the commercial rates. Apportionment would be done on a just and reasonable basis, and may involve a valuation. The existing surcharges that can apply to residential acquisitions would then apply to the residential element where relevant: the 3% surcharge for additional dwellings and the 2% surcharge for a non-resident buyer.

As well as addressing the inclusion of token commercial elements in a property acquisition it would of course impact on an acquisition where there was a significant commercial element being acquired, e.g. a large city centre development comprising ground floor retail outlets with flats above.

Significantly, the relief that allows six or more dwellings to attract commercial rates would still apply, which will help some large scale acquisitions escape this change particularly in the build to rent and student accommodation sectors.

Include a threshold amount of commercial for commercial rates to apply to the whole – under this approach, a mixed-property purchase would attract the commercial rates only where the commercial element is more than a certain threshold proportion of the consideration, for example more than 50%. Such an approach would mean that substantially mixed-property transactions would still benefit from the existing treatment for the whole transaction.

GOVERNMENT TO STOP ABUSE OF, AND INCORRECT CLAIMS FOR, MDR

In relation to MDR, the government wants to stop private individuals making unreasonable claims for this relief on buying their homes. The relief allows the purchaser to pay SDLT on the average consideration where there are multiple dwellings being acquired. The government gives examples of unreasonable claims, including a buyer claiming that an indoor entertainment area, swimming pool and toilet at the end of the garden were a separate dwelling. It has restated the purpose of the relief, which was to strengthen demand for, and reduce barriers to investment in, residential property, thereby promoting the supply of private rented housing. However, it is also conscious that to narrow the relief tightly could affect individuals buying homes with separate “granny annexes”. Because it sees benefits in intergenerational living, it is keen to understand the impact of the reform on such households.

The government is looking at three alternatives to change the rules:

Allow MDR where dwellings are acquired for a qualifying business use - a qualifying business use is buying the property for development or redevelopment and resale, or buying it to rent out. There

would be a clawback of the relief if the qualifying business use test were not satisfied for three years after purchase or until sale (if earlier). Two variants of this option are being considered – either all the dwellings need to meet the test or MDR is offered only in respect of those dwellings that meet it. The latter variant would allow a buyer to buy a series of flats, live in one and obtain MDR on the others.

Introduce a subsidiary dwelling rule – part of a building, or a building within the grounds of another dwelling, would not count as a separate dwelling for the purposes of MDR unless its value is at least a third of the total price of the property.

Allow MDR where at least three dwellings are acquired – this would increase the number of dwellings that need to be acquired for the relief to apply from two to three.

CONCLUSION

It is likely that the rules for both mixed-property acquisitions and MDR will be changed given the perceived abuse and incorrect claims the government notes. HMRC have been voicing concerns about this area of the law for quite some time now and the current rules have created an industry of SDLT reclaim agents who, the government says, are in some cases encouraging unreasonable interpretations of the current rules.

It is important that in the reform the government does not deter development of much needed new residential homes. It may be that the retention of commercial rates where six or more dwellings are acquired will mitigate the changes for some, but maybe not all large-scale developments.

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