Two for the price of one?

Indirect Tax | Personal tax



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Samara Goeieman considers the circumstances in which a property and its annexe will be eligible for multiple dwellings relief

Key Points

What is the issue?

The purpose of multiple dwellings relief is to reduce the rate of stamp duty land tax on the purchase of more than one dwelling, making it closer to the rate that would apply if the dwellings were purchased independently.

What does it mean for me?

HMRC’s guidance acknowledges that a wide range of factors must be considered when determining the number of dwellings. This article considers whether the configuration of a property and annexe qualifies as two separate dwellings.

What can I take away?

Relevant case law emphasises the importance of assessing the functionality of the properties and questioning whether, practically, each property is mutually private and secure from the other.

Multiple dwellings relief is available for purchasers of residential property who acquire interests in more than one dwelling at the same time. The purpose of the relief is to reduce the rate of stamp duty land tax on the purchase of more than one dwelling, making it closer to the rate that would apply if the dwellings were purchased independently.

Where a transaction, scheme, arrangement or series of linked transactions includes multiple dwellings, the rate of tax charged in respect of those dwellings is determined by the mean consideration: that is, the total consideration attributable to the dwellings, divided by the number of dwellings. However, the relief cannot be such as to reduce the tax payable to less than 1% of the total consideration.

This article considers whether the configuration of a property qualifies as two separate dwellings under the stamp duty land tax legislation and HMRC guidance.

Example: one dwelling or two?

Mr Smith wants to purchase a property comprising a freehold property with an annexe.

The annexe, which can be accessed through the property, has a kitchen, bedroom, storage room and bathroom and its own separate access, but it does not have separate services or council tax.

The property prima facie comprises two separate dwellings for the purpose of multiple dwellings relief: the main house and the annexe. However, how can Mr Smith ensure that the property actually qualifies as two separate dwellings so that multiple dwellings relief can be claimed? We will return to this question later.

The definition of a ‘dwelling’

A ‘dwelling’ is defined in Finance Act 2003 Sch 6B para 7(2). For the purposes of the relief, a building or part of a building that is used or suitable for use as a single dwelling (or is in the process of being constructed or adapted for such use) counts as a ‘dwelling’.

The legal definition is therefore rather circular – ‘a dwelling is a dwelling’ – and there is no further assistance or expansion on this meaning in the legislation.

HMRC guidance confirms that ‘dwelling’ takes its everyday meaning: ‘a building, or a part of a building that affords those who use it the facilities required for day-to-day private domestic existence and a sufficient degree of permanence’ (see SDLTM00372).

HMRC’s guidance acknowledges that a wide range of factors must be considered when determining the number of dwellings. A balanced judgment must be formed (see SDLTM00415). Matters that will be considered when making a judgment include whether a property:

- has separate access and privacy;
- has a separate postal address;
- has the facilities required for separate occupation (including a sleeping area, living area, bathroom and kitchen);
- has control of most or all of the utilities supplied to it; and
- is separately rated for council tax. The emphasis is on whether the

The emphasis is on whether the property is sufficiently self-contained to be considered as a ‘single dwelling’ (see SDLTM00410). The physical configuration of the property on the effective date is considered of prime importance:

‘“Physical configuration” in this context relates to the facilities of the dwelling, independent access to the dwelling and privacy from other dwellings. These aspects are considered to be of great importance and the lack of one of them would normally cast significant doubt on whether the area in question could be considered suitable for use as a separate “single dwelling”.’ (see SDLTM00420)

Recent case law
Fiander & Brower: need for privacy and security

Recent case law reveals that a pragmatic approach should be taken when determining whether a self-contained annexe may qualify for multiple dwellings relief.

In Fiander & Brower v HMRC [2020] UKFTT 190, the tribunal held that both the main house and the annexe could provide basic living needs, offering a space for sleeping, eating, cooking, washing and sanitary needs, alongside a place to relax. It was also held that occupants could carry on their daily lives without passing through common areas in the connected property, which each had separate main entrances.

Not much emphasis was placed on the council tax status of the annexe, or whether it had a separate utility meter and postal address, and a restrictive covenant. However, the fact that the main house and the annexe were connected via an open corridor meant that there was a lack of privacy and security in both parts of the property, and therefore neither were suitable for use as a single dwelling.

The taxpayers' claim for multiple dwellings relief was rejected. The tribunal said that the accommodation in both parts of the property needed to have 'a sufficient degree of privacy and security such that strangers could live in each part as a "stand-alone" dwelling'. The 'stand-alone' requirement followed from the word 'single' in the wording of the relief referring to 'single dwellings'.

Partridge: shared bathroom

A more recent case is E & C Partridge v HMRC [2021] UKFTT 6, where the taxpayers bought a cottage with an annexe. Their intention was to live in the cottage and for one of the occupant's parents to move into the annexe. They made a claim for multiple dwellings relief on the understanding that the main house and the annexe were separate dwellings.

The annexe had a separate main entrance and kitchen, and internal doors which when closed separate the annexe from the main residence. However, HMRC denied the claim on the basis that the dwellings were not independent of each other because the annexe did not have its own separate bathroom.

The First-tier Tribunal found that the burden of proof was with the claimants to show that the annexe was suitable for use as a single 'stand-alone' dwelling. A dwelling should accommodate the occupant's domestic living needs – to sleep, eat and wash – with a 'reasonable degree of privacy and security'.

The tribunal concluded that the living and bathing facilities of the annexe were not separate from the main house, so the two did not count as separate dwellings and the appeal was dismissed. To the eyes of ‘an objective observer’, the main house and the annexe would be regarded as a single dwelling when the purchase completed.

Ransom v Brewer Wallace Ltd: actual use In 2018, in the unreported case in the Leeds County Court of Ransom v Brewer Wallace Ltd, a husband and wife made a claim against their professional advisors for failing to advise on the availability of multiple dwellings relief. They bought a residential property with an annexe, with the intention that the wife’s mother would come and live with them.

The annexe had a dining room, a bedroom, a dressing room and its own utility supplies, but didn’t have separate post or council tax billing. The planning permission stated: ‘The annexe hereby approved shall only be occupied as an extension to and ancillary to the dwelling known as [the property] … and shall not be used as a separate, independent unit of living accommodation.’

HMRC’s SDLT Manual states that planning restrictions inhibiting use as a separate dwelling will be ‘a factor’ in considering suitability of use as a dwelling, although actual use will prove more helpful than theoretical use.

Mr and Mrs Ransom won the case, with the court concluding that had they made a claim for multiple dwellings relief, it would have been accepted. They were awarded damages equal to the difference between the stamp duty land tax paid and what would have been payable with a multiple dwellings relief claim.

The decision in Ransom differs from the decisions in Fiander and Partridge because the annexe could ‘be accessed by doors entirely independent from the main home’ and it was ‘not possible to move internally between the two properties’.

Back to Mr Smith

Similar to the Fiander case, the property and the annexe of Mr Smith’s freehold property are able to accommodate the basic domestic living needs of occupants, who can carry on their daily lives without passing through common areas in the connected property, with both having separate, exclusive entrances. However, although the property and the annexe have separate entrances, the annexe can be accessed via a common hallway, demonstrating a lack of separation.

This makes them too closely connected for the annexe to be suitable for use as a single dwelling and multiple dwellings relief is unlikely to be available on the purchase.
In the non-binding Ransom case, the Leeds County Court concluded that multiple dwellings relief could have been granted if claimed because it was ‘not possible to move internally between the two properties’. If the internal access was permanently closed and sealed, then the annexe is likely to qualify as a single dwelling and multiple dwellings relief would be available. Closing an internal access must be done before the ‘effective date’ and the safest route is for the works to be completed by the vendor. This is because the effective date is the earlier of completion and occupation. If upwork is done by the buyer prior to completion then it could be argued that he has been granted occupation rights for the purposes of undertaking the works.

Conclusion

Stamp duty land tax is never a straightforward issue, and the application of the potential reliefs will be equally complex.

Case law emphasises the importance of assessing the functionality of the properties on the effective date when making a multiple dwellings relief claim and questioning whether, practically, each property is mutually private and secure from the other.