# HMRC consults on changes to the calculation of stamp duty land tax and multiple dwellings relief

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The CIOT and ATT responded to HMRC's consultation on amending the stamp duty land tax rules for acquisitions of mixed-use property and for multiple dwellings relief.

HMRC's consultation on *Stamp Duty Land Tax: Mixed – Property Purchases and Multiple Dwellings Relief* considers two areas: applying an apportionment basis to the acquisition of mixed-use properties (properties consisting of both residential and non-residential property); and changes to stamp duty land tax (SDLT) multiple dwellings relief (MDR) for purchases of two or more dwellings.

The aim is to stop buyers classifying or re-classifying their purchases as mixed-use to take advantage of the lower non-residential rates or to claim multiple dwellings relief in a way that is considered inappropriate.

The consultation is a stage 1 consultation seeking views on the policy design and any alternatives before consulting further on specific proposals for reform.

## Apportionment

Purchases of mixed-use property are currently wholly charged to the lower non-residential rates of SDLT (a maximum of 5% compared to a top rate of 17% for residential property). The consultation seeks views on introducing an apportionment method of calculating SDLT to apply residential rates to the residential element and non-residential rates to the non-residential part of the mixed-use property.

In the CIOT's response, we agreed that apportionment should remove the incentive to put forward unmerited claims (or reclaims) for small elements of non-residential use to obtain the benefit of the much lower SDLT mixed-use rates in what is, in effect, a residential property acquisition. However, apportionment adds complexity to what is already a complicated area, particularly for conveyancers who are not tax advisers, and the need for a valuation for more transactions.

Introducing apportionment would lead to a higher rate of SDLT than is currently paid on some mixed-use transactions that are predominantly commercial. Recent HMRC research points to a 1% increase in the effective rate of SDLT on commercial transactions, giving rise to an 11.7% decrease in the number of non-residential transactions.

The method of apportionment proposed in the consultation has the potential to tax the residential elements of a high value transaction with a relatively low value dwelling (such as farms with a low value farmhouse or a development site with a small residential element) at disproportionately high rates and to introduce

inconsistency in that similar transactions could suffer a significantly different tax treatment.

Those disadvantages could be overcome by using a calculation method similar to the existing method for MDR with:

- the residential element being assessed at rates appropriate to the consideration for the residential element only (as under existing MDR rules in FA 2003 Schedule 6B, but allowing the higher rates to apply, where appropriate); and
- the non-residential element being charged at rates applicable to the overall price.

An alternative proposal put forward in the consultation is to introduce a rule whereby an acquisition of mixed-use property is only taxed wholly at the non-residential SDLT rates if the non-residential element of the transaction is above a certain threshold of the consideration (50% is suggested). This approach would remove the possibility of including a token amount of non-residential property in a purchase to gain the benefit of the lower mixed-use rates with the advantage of a reasonable degree of certainty at a relatively low valuation cost. However, it introduces an inevitable cliff edge and therefore potential for dispute at the boundaries and raises the question of the level of an appropriate threshold that would be consistent with wider policy aims.

One option would be to consider whether a lower threshold than half (perhaps a one-third non-residential threshold to match the subsidiary dwelling proportion or a 25% threshold having some parallels with indirect disposals for non-resident CGT) would meet the policy intent without unintended consequences for business mixed-use acquisitions.

## Multiple dwellings relief (MDR)

MDR reduces the SDLT payable per dwelling so it is closer to the amount payable on the purchase of a single residential property.

The consultation puts forward four options to address MDR claims outside the policy intent. While all the options largely achieve the aim of eliminating perceived inappropriate MDR claims, they each have disadvantages in terms of further adverse consequences, such as requiring an intention test that is not wholly consistent with a

transaction tax (options one and two) and potentially impacting business transactions, whereas the targeted abuse occurs in transactions by individuals. Option four would not rule out the claims HMRC wishes to address and would create a distortion between the purchase of two dwellings (no MDR) or three dwellings (MDR available).

Option three is to restrict MDR by introducing a ‘subsidiary dwelling rule’ for business and non-business purchasers, such that subsidiary dwellings (the value is less than a third of the total price) are ignored for MDR. Option three appears to achieve HMRC’s aim of eliminating perceived inappropriate MDR claims by private individuals because requiring the subsidiary dwelling to be valued at more than a third would eliminate the possibility of claims for utility rooms, garages, pool rooms, etc. Aligning the treatment for MDR with the higher rates subsidiary dwelling exclusion would remove the anomaly/inconsistency that allows, as the consultation notes, an individual purchaser to both escape the higher rates and to claim MDR. However, the potential need for a valuation of the subsidiary element (particularly complex where there are restrictions on separate sale or letting) to identify the value has cost and timing implications, although the potential need for a valuation already exists for the higher rates exclusion.

The examples of claims HMRC wish to exclude appear to be confined to non-business purchases; this might suggest that option three could apply solely to non-business purchases to meet the government’s aims.

The consultation provides a partial post-legislative evaluation of MDR in identifying areas where it is being used in ways that were not intended. However, it does not provide any indication or data to indicate whether MDR is achieving the policy aim of promoting the supply of private rented housing more generally and whether it should be retained or reformed in other ways. We noted our strong support for the systematic evaluation of reliefs to ensure they are achieving their objectives at a reasonable cost.

The ATT also made a short response to the consultation and the points we made largely overlapped with the CIOT response as detailed above. While we acknowledge that there is a definite problem with individuals seeking to reduce SDLT rates on residential property, the ATT response emphasised concerns about some of the solutions proposed. We consider that apportionment would introduce challenges, particularly for smaller businesses purchasing mixed use properties, and introduce

uncertainties. In respect of the proposed changes to MDR, we felt that option three was a fair solution which should address HMRC's primary concern in this area, while all the other options proposed would affect a much larger group of purchasers unnecessarily.

The CIOT's response is available here: www.tax.org.uk/ref894

The ATT's response is available here: www.att.org.uk/ref393