Definitions of residential property for SDLT

General Features | Personal tax

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CIOT contributes to the HMRC initiative

The CIOT is contributing to HMRC's Stamp Taxes project to consider current difficulties on the main statutory definition of residential property for SDLT purposes in FA 2003 s 116 and the associated HMRC guidance.

The plurality of definitions leads to uncertainty in relation to whether it is possible to read across guidance in one context or tax to another where common terminology is used, for example 'garden or grounds' in FA 2003 s 116(1)(b) and TCGA 1992 s 222(1)(b).

In addition, there is already a significant difference between SDLT charged on residential and non-residential property. This differential will increase when the higher rates on purchases of additional residential properties come into force with effect from 1 April 2016.

After earlier input and discussion, members of the CIOT's property taxes sub-committee attended an HMRC workshop to discuss the challenges in applying the definitions and to debate possible solutions. The discussion considered several issues: the origins of the legislation (the exclusions in s 116(3) are derived in part from VAT legislation and from statutes in other jurisdictions); the significance of past use particularly if a building is not occupied at the date of transfer; and the effect of future works to render a building suitable for use as a dwelling and the significance of restrictions on occupation (typically an 11-month occupation) in considering the property's suitability as a dwelling.

There was also some discussion of the point at which a building under construction becomes a dwelling; possible tests may include VAT's 'golden brick' or the 'muddy

brick’ (one line of bricks not necessarily above ground level) or perhaps the start of work to implement a planning consent.

In terms of the current exclusion from residential property in s 116(3), representatives underlined the need for a clear policy on exactly what type of properties it is intended should be subject to SDLT at residential rates.

Difficulties are experienced in practice in construing s 116(1)(b) (‘land that is or forms part of the garden or grounds of a building’). Representatives noted the fairly extensive case law on this issue for CGT purposes. It is likely that the difficulties will be in sharper focus now the 3% SDLT surcharge has been introduced.

Comments on difficulties in applying the definition of residential property for SDLT, or examples, should be sent to technical officer Kate Willis at kwillis@ciot.org.uk.

We will continue to report back on how the project is progressing.