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Stamp Duty Land Tax: Mixed-Property Purchases and Multiple Dwellings Relief

Response to the consultation by the Chartered Institute of Taxation

1 Executive Summary

1.1 The consultation considers two areas; applying an SDLT apportionment basis to the acquisition of mixed-use properties (properties consisting of both residential and non-residential property) and reform of multiple dwellings relief for purchases of two or more dwellings.

Apportionment

1.2 Purchases of mixed-use property are currently wholly charged to the lower non-residential rates of SDLT. This 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, to address abuse.

1.3 We agree apportionment should remove the incentive to put forward unmerited (re-)claims 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. The treatment of purchases that include six or more dwellings as non-residential mean that large scale acquisitions of purely residential property are not affected by apportionment.

1.4 On the other hand, 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. We note the government considers the home buying and selling process is already potentially expensive, time consuming and stressful (see Levelling Up White Paper p225). This change has the potential to exacerbate the process.

1.5 Introducing apportionment would generally lead to a higher rate of SDLT on certain mixed-use commercial transactions than is paid currently. Recent HMRC's research points to a 1% change in the effective tax rate leading to an 11.7% change in non-residential transactions.

1.6 The particular 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 at disproportionately high rates and

introduce inconsistency in that similar transactions could suffer a significantly different tax treatment. This could be overcome by using a calculation method similar to the existing method for multiple dwellings relief (with the residential element being assessed at rates appropriate to the consideration for the residential element only).

1.7 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 such as promoting development of mixed-use properties on brownfield sites.

Multiple dwellings relief

1.8 Multiple dwellings relief (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 for reform to address MDR claims that are 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 three has the further advantage of removing the anomaly/inconsistency between the higher rates and MDR that allows, as the consultation notes, an individual purchaser to escape the higher rates and to claim MDR. Noting that the examples of claims HMRC wishes to exclude appear to be confined to non-business purchases, this might suggest option three could apply solely to non-business purchases to meet the government's aims.

1.9 The consultation provides a partial evaluation of MDR in identifying areas where MDR 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 strongly support the systematic evaluation of reliefs to ensure they are achieving their objectives at a reasonable cost, as reflected in Stage 5 of the consultation process (Stage 5: Reviewing and evaluating the change).

2 About us

2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most

effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

3.1 HMRC is consulting, at stage 1 of the consultation process[1], on two aspects of the SDLT regime;

- amending the way SDLT is calculated for the acquisition of property in a single or linked transaction that is partly residential and partly non-residential (mixed-use property), and
- four options to change the application of Multiple Dwellings Relief (MDR)

We welcome the fact this engagement is taking place at stage 1 of the consultation process (Stage 1: Setting out objectives and identifying options). We think each of the five stages of the consultation process adds considerable value to implementing effective change consistent with the policy intent.

3.2 The rates of SDLT that apply to the acquisition of wholly residential property are significantly higher than the rates applicable to mixed-use property. Table A (residential) rates[2] (up to 17%) apply where the land 'consists entirely of residential property'. Table B[3] (non-residential or mixed) rates (up to 5%) apply to the acquisition of mixed-use property. As the consultation notes, there is no lower limit on the amount of non-residential property in a purchase to access Table B rates nor are there rules requiring the residential and non-residential property to be closely located to each other.

3.3 The material divergence between SDLT rates for residential property and non-residential/mixed-use property has led to claims to treat transactions as mixed-use or to claims for MDR in ways that HMRC regard as incorrect and an abuse of the rules often through 'reclaim agents' - see also the guest blog post on the CIOT website for further background: https://www.tax.org.uk/stamp-duty-refunds-too-good-to-be-true).

3.4 There are no changes proposed to the treatment of purchases of six or more dwellings as non-residential under FA 2003 section 116(7).

3.5 Our stated objectives for the tax system include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence

[1] Stage 1 of the consultation process is setting out objectives and identifying options.
[2] https://www.gov.uk/stamp-duty-land-tax/residential-property-rates
[3] https://www.gov.uk/stamp-duty-land-tax/nonresidential-and-mixed-rates

4 An apportionment basis for mixed-use property

4.1 The consultation is seeking views on introducing an apportionment method of calculating tax in mixed-property cases. The method proposed in Annex A of the consultation is to work out the proportions of the whole consideration relating to residential and non-residential property elements. Tax would then be calculated on the assumption that the whole consideration was for residential property, and again separately on the assumption that the whole consideration was for non-residential property. The two tax figures produced would then be reduced by reference to the proportions of the whole consideration relating to residential and non-residential property elements. The reduced tax figures would be added together to get the final tax bill. The higher rates for additional dwellings and non-resident SDLT surcharge would apply to the residential element where applicable.

The second proposal is to introduce a rule whereby an acquisition of mixed-use property is only taxed at the non-residential SDLT rates if the non-residential element of the transaction is above a certain threshold (50% is suggested).

4.2 **Q1 What do you see as the advantages and disadvantages of apportionment?**

Advantages of apportionment

- Apportionment should remove the incentive to put forward unmerited (re-)claims for small elements of non-residential use to obtain the benefit of the much lower mixed-use rates in what is, in effect, a residential property acquisition.
- The fact that no changes are proposed to the treatment of purchases that include six or more dwellings as non-residential under FA 2003 section 116(7) means that large scale acquisitions of purely residential property are not affected by apportionment.

Disadvantages of apportionment

- Apportionment (regardless of the methodology adopted) adds more stages into the SDLT calculation that is already a disproportionately complicated area of tax law for conveyancing practitioners, most of whom are not tax experts. An updated SDLT calculator covering the apportionment calculation in most situations will help address this issue.
- Irrespective of the apportionment method adopted, valuation of the different residential and non-residential elements will need to be obtained in order to determine the attributable values on a just and reasonable basis. The need for a valuation would therefore extend to more transactions (where a valuation was not previously required) potentially adding costs and compliance risk given the inherent uncertainty in valuation and extending the time for completing purchases. We note the government considers the home buying and selling process is already potentially expensive, time consuming and stressful (see Levelling Up White Paper[4] p225). This change has the potential to exacerbate the process.
- As explained below for Question 3 the particular method of apportionment proposed:

  (a) Taxes at disproportionately high rates the residential elements of a high value transaction with a relatively low value dwelling.

[4] https://www.gov.uk/government/publications/levelling-up-the-united-kingdom

(b) Introduces inconsistency in that similar transactions could suffer a significantly different tax treatment depending on whether there is:

(i) a single dwelling included in a larger transaction or

(ii) two - five dwellings included if MDR is claimed (when the MDR method would work out the tax on the dwellings element at rates of tax applicable to the consideration payable just for the dwellings).

- Introducing apportionment would generally lead to a higher rate of SDLT on certain mixed-use transactions than is paid currently. Recent HMRC's research indicates that a 1% change in the effective tax rate leads to an 11.7% change in non-residential transactions. The wider potential consequences of the response to the higher tax charge on mixed-use transactions will need to be evaluated and reflected in policy impact assessments, both as regards revenue effects and broader economic consequences.

4.3 **Q2 What are your views on how the mixed-property rules interact with the other aspects of SDLT?**

Currently the effect of the mixed-use property rates and the six or more rule allows businesses making purchases of relevant properties which include dwellings to apply non-residential rates. Under the current rules, acquisitions of:

- six or more habitable dwellings in a single transaction;
- fewer than six dwellings, together with several shops, etc (for example the acquisition of a terrace of five shops with a flat above each shop); and
- a mixture of habitable and uninhabitable homes for redevelopment (where fewer than six of the homes are habitable 'dwellings')

would all be taxed at the non-residential rates.

4.4 Following HMRC's change of view in November 2020 the higher rates do not apply to mixed-use purchases where a claim for MDR is made for the dwellings unless the non-residential element of the transaction is negligible or artificially contrived (see SDLTM09740). Previously, HMRC considered that the surcharge could apply whenever an MDR claim was made. It is not clear what HMRC consider to be 'negligible' although it is possible to make a non-statutory clearance where there is uncertainty in how HMRC will apply their interpretation. This uncertainty, and the need to make a non-statutory clearance, may hold up transactions.

4.5 The 'Transactions entered into before completion of a contract' rules (FA 2003 section 45 and Schedule 2A) operate not on the basis of the property sold but by reducing the chargeable consideration. Apportionment would need to consider the interaction with these rules and set out the chargeable consideration that is being reduced.

4.6 **Q3 What issues would arise in particular for mixed-property purchases that included an MDR claim if apportionment was introduced?**

Q4 What impact would apportionment have on both individual and business purchasers of mixed-property?

Q5 What impact would apportionment have on business transactions?

Please see our response to question 2 above. Introducing apportionment would change the treatment of business acquisitions in the second and third circumstances and generally lead to a higher rate of SDLT than paid currently with the potential consequences suggested by HMRC's recent research.

We comment further on HMRC's proposed apportionment methodology.

HMRC's proposed methodology

Under HMRC's apportionment method, the effect is to apply the higher SDLT residential rates and bands to the residential element based on the total consideration instead of the rates applicable to the consideration for the actual residential element. For example, if the split of residential and commercial in the Annex A Mr and Mrs C's example was 70% residential and 30% commercial (instead of 98% residential and a de minimis 2% commercial), the residential rates of SDLT used in the calculation are based on the total consideration of £3,500,000 rather than the rates and bands applicable to the residential element of £2,450,000 (70% of £3,500,000). Once the residential and non-residential elements diverge from merely a token commercial element there is therefore potential for a disproportionate charge.

The disproportionate charge could apply to certain commercial acquisitions of mixed-use property that are not part of the activity HMRC wishes to target particularly in circumstances where the residential element is of a significantly lower value than the non-residential element. The effect of the proposed rules, for example in the case of a single dwelling being included in such a transaction would be even more marked. It may affect, for example, farms with a low value farmhouse or a commercial building with a small residential element, for example a caretaker's flat or penthouse apartment, or a development site that includes a residential property.

If the proposed apportionment methodology is adopted, there would then be a misalignment between:

(a) cases where between two and five dwellings are bought with non-residential land, where it is proposed that the existing MDR rules are largely to be used (such that that the SDLT on the dwellings is to be worked out just on the price apportioned to the dwellings) and

(b) a transaction where only one dwelling is bought with non-residential land.

Such a misalignment would reintroduce an incentive for a purchaser (in relation to (b) above) to claim that there are two dwellings being purchased in place of one. As explained below in our response to Q10, an alternative simpler approach, which would reduce this misalignment, would be to use the existing MDR methodology for a single dwelling acquired with non-residential property.

4.7 **Q6 What impact would apportionment have on others involved in the purchase, such as tax practitioners, conveyancers and valuers?**

Q7 What would the impacts be on purchasers of having to value both the residential and non-residential elements of a purchase?

Q8 At what stage in a purchase could a purchaser expect to determine the relative values of the residential and non-residential elements of the property? For example, research, survey, consultation with a selling agent, or exchange.

As we note above, apportionment (regardless of the methodology adopted) adds more complexity into the SDLT calculation of rates for conveyancers. The need to value the constituent parts adds not only to cost but

a level of uncertainty into the amount of SDLT due given that valuation is not an exact science and therefore open to variances.

Undertaking a professional valuation (if required) would clearly incur costs and potentially extend the time to complete a purchase or cause a delay in paying SDLT post completion if the need for a valuation is only recognised at a later stage. We note the comments in the draft assessment of impacts in relation to impacts on businesses that any change is expected to have a negligible impact on businesses acquiring property. However, we are not sure this assessment fully reflects the likely position. Setting aside instances of individuals claiming mixed-use treatment where a minimal amount of non-residential property is acquired as part of the purchase of the individual's home, the majority of acquisitions of mixed property will be by businesses. Introducing apportionment of the purchase price between residential and non-residential elements of a purchase will result in ongoing costs in relation valuing the different parts of the property. If apportionment is adopted there will need to be effective communication to conveyancers particularly.

4.8 Obtaining professional valuations will often be advisable for vendors selling mixed use property for establishing the vendors' CGT liability (if the vendor is an individual or trustee), firstly because there are different rates of CGT on disposals of residential and non-residential property, and secondly because CGT on residential property gains must be reported and accounted for within 60 days of completion of the transaction. HMRC indicated at a consultation meeting that there would be no intention for valuations under the option for the apportionment method to be checked by the Valuation Office Agency, which is likely to increase the risks for those filing returns on purchases of mixed -use property if an apportionment method is introduced. However, a post transaction valuation check facility is available for checking valuations on which CGT computations are based.

4.9 **Q9 Do you agree that apportionment would discourage abuse and give more equitable outcomes in calculating SDLT?**

We agree apportionment should discourage the claims HMRC wish to target. There are distortions in the current rules in that higher value residential properties with commercial grounds pay a lower SDLT rate than a wholly residential property. However, the proposed apportionment method introduces new distortions by charging the residential element to SDLT at the rate set by the overall price. This could be overcome by using a calculation method more like the existing method for MDR (with the residential element being assessed at rates appropriate to the consideration for the residential element only).

4.10 **Q10 Looking at the information in Annex A, do you have an alternative method of calculation for apportionment that would be effective in discouraging incorrect claims that the purchase of residential property is actually of mixed-property?**

One alternative method of looking at each part of the property in isolation and calculating the SDLT charge on the residential and non-residential parts as if they were separate transactions would mean the transaction as a whole has the benefit of two nil rate bands. This approach therefore introduces disparities; Mr and Mrs C in the example at annex A would benefit from an additional nil rate band in relation to the non-residential element. This method is adopted for the 15% higher rate allocation FA 2003 Sch4A para2(3) but that is a flat rate charge so there are no or lower bands.

Another alternative apportionment method methodology that would address the potentially disproportionate and arbitrary results for mixed use property acquisitions under the proposed method at

annex A, while retaining the aim of discouraging claims where the commercial element is minimal, would be to adopt a formula similar to that for the existing situation for MDR, with:

- the non-residential element being charged at rates applicable to the overall price (as per the consultation)
- the dwelling(s) being charged at rates applicable to the price for the dwelling(s) on their own (as under existing MDR rules in FA 2003 Schedule 6B, but allowing the higher rates to apply, where appropriate.

The residential element would benefit from the full set of lower bands applicable to residential property. The non-residential element would, as under the annex A proposal, effectively share, with the rest of the property, the lower bands applicable to non-residential property, consistent with FA 2003 Schedule 6B paragraph 5.

This alternative retains the inherent disadvantages of apportionment (added complexity and requiring valuations) but it removes the distortion of the residential parts being taxed at a high effective rate set by the overall price and the misalignment between a transaction with one dwelling compared to transactions with two or more dwellings. Those who regularly advise on SDLT and many conveyancers are familiar with this method because it is explained in paragraphs SDLTM29935 to SDLTM29945 of the SDLT Manual.

4.11 **Q11 What would be the impact of allowing mixed-property treatment only for transactions that reach a particular threshold of non-residential property? What should such a threshold be and why?**

Q12 What do you see as the advantages and disadvantages of allowing mixed-property treatment only where a minimum proportion of the consideration is in respect of non-residential land?

The alternative proposal outlined at paragraph 3.22 of 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. The valuation would only need to indicate that the threshold had been exceeded. 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 such as promoting development of mixed-use properties on brownfield sites. Where the non-residential element is less than the threshold, applying an apportionment would help to minimise the effect of the change on mixed use acquisitions albeit with added complexity and a valuation cost.

4.12 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 which would have some parallels with indirect disposals for non-resident CGT) would meet the policy intent without unintended consequences for business mixed-use acquisitions. Consideration might need to be given to the possibility of artificially contrived mixed purchases to the extent these would not be clearly caught by existing anti-avoidance legislation.

4.13 **Q13 Do you have alternative proposals to the ones set out in this consultation which would be effective in discouraging incorrect claims that the purchase of residential property is actually of mixed-property?**

Please see paragraph 4.10 for Q10 above.

4.14 **Q14 How do the rules for mixed-property feature in commercial decision making?**

Q15 What would be the impact of changes to the mixed-property rules for businesses that typically make purchases of both residential and non-residential land, for instance corner shops, bed and breakfasts, pubs? Please consider both change in the form of apportionment and a threshold.

4.15 HMRC guidance indicates that in appropriate cases a B&B is treated as non-residential (SDLTM00375) and therefore may not be affected.

4.16 The effect of apportionment on the acquisition of corner shops and pubs with a dwelling included will depend upon on whether the effective residential rate is more or less than 5%. With residential prices increasing generally it might be expected apportionment will generally increase SDLT on this sort of property, leading purchasers to consider split acquisitions.

4.17 The rationale for apportionment between residential and non-residential property is not clear for the acquisition of a mixed-use site where the intention is to demolish and develop. If it is development, it is clearly true business use

5 MDR reform options

5.1 MDR was introduced for buyers of residential property acquiring two or more dwellings in a single transaction or linked transactions for transactions with an effective date on or after 19 July 2011. The relief reduces the SDLT payable per dwelling so it is closer to the amount payable on the purchase of a single residential property. The policy intent of MDR (as set out in the consultation) is *'to help strengthen demand for, and reduce barriers to investment in residential property, promoting the supply of private rented housing'*.

5.2 We strongly support the systematic evaluation of reliefs to ensure they are achieving their objectives at a reasonable cost, as reflected in Stage 5 of the consultation process (Stage 5: Reviewing and evaluating the change). The National Audit Office has drawn attention to the lack of systematic effort put into evaluating the impact of tax measures. This consultation provides a partial evaluation in identifying areas where MDR 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. It is difficult to evaluate the value of the proposed reforms in isolation. We suggest the proposed reforms should be considered in this wider context, whether the benefits of MDR offsets the complexity that a relief for 'bulk' purchases inevitably involves. We note the questions 26-28 of the consultation concern MDR more generally potentially indicate this wider evaluation may form part of this consultation although it is not explicit.

5.3 We note the government also does not wish to 'discourage' the provision of separate self-contained accommodation for vulnerable family members on the same site as the family home. Currently the purchase of a main home with a self-contained annex for use by a family member can benefit both from the exclusion[5] from higher rates (provided the value of the main house is not less than two thirds of the value of the whole property) This wording covers cases where there are two or more subsidiary dwellings and the benefit of MDR. The availability of MDR in these circumstances does not appear to fall squarely within the policy intent.

[5] FA 2003 Schedule 4ZA paragraph 5(5)

Option 1 – Allow MDR only where all the dwellings are purchased for a 'qualifying business use', that is development or redevelopment and resale or exploitation of a source of rents.

5.4 **Q16 What are respondents' views on the introduction of an intention test?**

Q17 What are respondents' views on the application of the proposed three-year post-transaction period?

An intention test is usually inconsistent with a transaction tax (although we recognise it is found elsewhere within the SDLT code including in the current reliefs from the 15% higher rate in Schedule 4A); in practice it is difficult to evidence and requires internal systems to monitor use over the three-year control period, and therefore creates an ongoing administrative burden and fails to offer certainty at the point of acquisition.

5.5 **Q18 What impacts would Option 1 have on businesses?**

HMRC's analysis indicates the MDR claims they wish to target are almost entirely made by private individuals. Option 1 precludes all claims for acquisitions of more than one dwelling where one of dwellings will be used for a non-qualifying purpose, most commonly as a home. Examples may include an acquisition of a house with a basement flat the buyer intends to let in the open market, a rural property with a main house and subsidiary dwellings to be rented out, or an acquisition by an investor of between two to five flats in a development, one of which will be used as a home by the investor. These examples appear to fall clearly within the stated policy intent of MDR

Option 2 – Allow MDR only in respect of the dwellings purchased for a 'qualifying business use'

5.6 **Q19 Do you foresee any issues with the proposed method of calculating the relief?**

Q20 Are there any other types of property-related businesses purchasing residential property (and which support the aims of MDR) which should qualify for relief under Options 1 or 2?

One possibility would be to consider the reliefs in FA 2003 Schedule 4A for the higher rate including the relief for an intention to use for a relievable trade. However, the reliefs would need to be tested against the policy aims of MDR ideally as part of an overall evaluation of MDR to ensure it is achieving its objectives.

Q21 What would be the impact of Options 1 and 2 on the structuring of commercial transactions involving the purchase of dwellings?

Option 2 addresses the 'all or nothing' issue in Option 1 allowing an MDR claim for an investor who will occupy one of the dwellings. Option 1 and 2 share the same disadvantage in employing an intention test in a tax on transactions with consequential complexity and compliance risk. Option 2 raises the possibility of MDR claims being made in similar circumstances that HMRC consider inappropriate but with the overlay that the purchaser intends to let out that part. An intention test may open up the possibility of disputes that the proposed reforms wish to avoid. As the consultation notes, the option also involves additional administrative burdens in apportioning value between non-qualifying and qualifying dwellings.

Option 3 – Restrict MDR by introducing a 'subsidiary dwelling rule' for business and non-business purchasers

5.7 **Q22 Does Option 3 introduce any other impacts on businesses?**

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 between the higher rates and

MDR 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 as identified above in relation to apportionment although noting the potential need for a valuation already exists for the higher rates exclusion.

5.8 We note the examples of claims HMRC wishes to exclude appear to be confined to non-business purchases. This might suggest option three could apply to non-business purchases only to meet the policy intent. In terms of impacts on business, a developer acquiring a residential property with subsidiary dwellings would not be able to claim MDR despite apparently being within the policy intent, while in the case of a corporate developer would also incur the higher rates. Similarly, potentially MDR would be removed for an acquisition of a residential property with subsidiary dwellings to be used in a furnished holiday letting business.

Option 4 - Allow MDR only for purchases of three or more dwellings.

5.9 We agree with the conclusion in the consultation that this option would not rule out the claims HMRC wishes to address and would create a distortion between the purchase of two (no MDR) or three dwellings (MDR).

5.10 **Q23 What do you see as the advantages and disadvantages of each of the options set out above?**

Please see above.

5.11 **Q24 Are there any other solutions to the problem described above not covered by the options in this consultation and which would, in your view, tackle the problem more effectively and efficiently?**

As we set out above at paragraph 5.2, the answer to this question is at least in part dependent on whether MDR is achieving the policy aim of promoting the supply of private rented housing, whether it should be retained or reformed in other ways.

We entirely recognise the increase in contested MDR claims particularly as a result of interventions by 'reclaim agents' making unsolicited approaches to taxpayers following a purchase and the consequential effect on HMRC resourcing. As the consultation notes, HMRC has successfully challenged claims in the tribunals and there is now an extensive body of case law in the First-tier Tribunal (albeit non-binding) and increasingly in the Upper Tribunal. Has HMRC seen a reduction in claims as a result of these decisions and the improvements made to guidance? A reduction in the level of claims would need to be taken into account in balancing the need for a legislative change against the approach of continuing to improve guidance and enforce legislation as it stands.

5.12 **Q25 Would options 1, 2 and 4 have any material negative impact on the purchase of property which contains, for example, an annex which is intended to provide accommodation to an aged or vulnerable person, typically a relative? If so, would option 3, either alone or in combination with the other options, present a solution to this negative impact?**

Please see our comments at 5.3 above**.**

6 Questions concerning MDR more generally

6.1 **Q26 How does MDR feature in commercial decision making?**

Q27 To what extent does the availability of MDR impact purchasing decisions where the six or more rule applies?

Q28 To what extent does MDR currently impact on the supply of housing for both rental and purchase?

A purchase of six or more dwellings in a single transaction is treated as a non-residential transaction, however a purchaser can choose instead to claim MDR instead (FA 2003 section 116(7) and Schedule 6B paragraph 5(6)(a)). In relation to question 27 we note that, in many cases (and particularly where the higher rates and the non-resident surcharge applies), it will not be worthwhile claiming MDR if six or more dwellings are purchased other than where the average price per dwelling is low and, in these cases, multiple lower value properties are almost always going to be purchased for business use.

6.2 We welcome an evaluation of the efficacy of MDR overall as part of the consultation process as noted above at 5.2.

7 Acknowledgement of submission

7.1 We would be grateful if you could acknowledge safe receipt of this submission and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

21 February 2022