



Clauses 50-53

Stamp Duty Land Tax

Executive Summary

- These clauses increase residential rates of stamp duty land tax (SDLT) for purchase of additional dwellings and purchases by companies.
- These increases add to the existing divergence between residential and non-residential and mixed use SDLT rates, that incentivises taxpayers to argue the property they are buying fits into the last two categories. This potentially adds to HMRC's compliance costs.
- There are grounds for reconsidering alternatives to the current approach for calculating SDLT for mixed use properties, such as introducing an apportionment system.

Overview and background

1.1 These clauses increase SDLT residential rates:

- The surcharge for purchases of additional residential properties (for example second homes, buy to lets) and for residential properties bought by companies increases from 3% to 5%.
- The SDLT flat rate that applies to acquisitions of high-value residential property (more than £500,000) by companies and other non-natural persons increases from 15% to 17%.

The increases apply to purchases on or after 31 October 2024, subject to transitional provisions.

The new rates increase the existing substantial divergence between SDLT rates applicable to residential property and those applying to non-residential or mixed use (that is, part residential and part commercial) property. There is now a top residential rate of 19% compared to a top rate of 5% for a purchase of a non-residential/mixed property.

CIOT comments

1.2 While the CIOT does not comment on the level of rates per se, the marked divergence, which is further increased by this change in rates, incentivises taxpayers to argue that their purchase is non-residential or mixed use to take advantage of the much lower rate.

For example:

Charlie, a UK resident, buys a second home for £6million. It is a six-bedroomed house in the country with gardens and a paddock used for grazing horses.

Charlie pays SDLT of £931,250 at residential rates.¹

Charlie is subsequently approached by a refund agent who says the paddock used for grazing means the purchase is partly commercial so the mixed use rates apply, not the wholly residential rates. Mixed use reduces the SDLT calculation to £289,500, a saving of £ 641,750.

Even if Charlie had no other properties and therefore paid ordinary residential SDLT rates (without the second property surcharge), Charlie's SDLT saving by successfully claiming mixed use would be £341,750 (£631,250 - £289,500).

- 1.3 The question of whether a purchase is residential or mixed use is determined by a multi-factorial approach. The boundary between what is solely residential and what is mixed use can be a difficult area especially for higher value houses requiring significant HMRC compliance resource to monitor. It has led to an increasing number of cases in the First-tier Tribunal and higher courts.

Has HMRC assessed or evaluated the compliance resource cost that arises as a result of the rates divergence?

- 1.4 If the divergence between residential/mixed use rates is maintained, is there an alternative to the current approach?

In 2021-22 HMRC consulted² on

- i) abolishing the SDLT relief for Multiple Dwellings Relief (MDR) and
- ii) introducing an apportionment method of calculating SDLT for mixed use property (the residential portion of a mixed-property purchase would be taxed as residential property, and the remaining non-residential portion of the purchase would be taxed as non-residential property).

The aim was “to ensure fairer outcomes between those buying residential property and to reduce or eliminate the scope for incorrect claims and abuse of the rules”. MDR was subsequently abolished but the then government decided not to make any legislative changes introducing new apportionment rules for mixed property purchases largely on the grounds of complexity.

- 1.5 We suggest that there are good grounds for re-evaluating the pros and cons of a legislative method of apportionment (and potentially for evaluating other alternative mechanisms such as an intermediate rate of tax for mixed use property) to replace the current approach on the basis that:

- Some of the complexity recognised at the time of the consultation arose from the interaction with MDR that has now been abolished.
- The SDLT rules tax mixed property purchases wholly at the lower non-residential rates of tax, even where only a small proportion of the property

purchased is non-residential. This imbalance is exacerbated by the latest increase in rates.

- A disproportionate amount of HMRC resource, tribunal time and litigation costs is incurred in determining the validity of claims for mixed use. The multi-factorial approach established in recent case law, while helpful, means that establishing mixed use is fact dependent and therefore disputes are likely to continue while a significant rate disparity exists.
- Having a system with such a large disparity between rates based on potentially minor differences in facts encourages a market for potentially unscrupulous refund agents to take substantial fees by persuading taxpayers to stretch the margins between residential and non-residential parts of their property, exacerbating the number of cases that HMRC are required to take, as noted above.

Notes

1. If Charlie is a non-UK resident Charlie's SDLT liability is higher at £1,051,250 making the savings by claiming mixed use even greater.
2. [Stamp Duty Land Tax: mixed-property purchases and Multiple Dwellings Relief - GOV.UK](#)

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