Briefing from the Chartered Institute of Taxation
for Finance (No 2) Bill 2024

Property Taxes

Abolition of SDLT multiple dwellings relief : clause 7
First-time buyers' relief SDLT bare trustee: clause 8
Exemption from SDLT for social housing: clause 9
Public bodies 15% SDLT rate: clause 10

Executive Summary

Clause 7 - Multiple Dwellings Relief (MDR) is to be abolished following consultation and evaluation of its efficacy. Evaluation of tax reliefs in this way is welcome, however it is possible there may be unintended consequences on funding for certain sectors such as student accommodation. Furthermore the differential between residential and non-residential SDLT rates is now greater than when MDR was introduced. The withdrawal of MDR exposes this differential, creating potential anomalies. We highlight three.

Clause 8 - We are supportive of this change to first-time buyers' relief that follows representations we made in 2023 with the Stamp Taxes Practitioners Group.

Clause 9 - These changes are welcome in removing uncertainties and updating the legislation for changes in social housing legislation. However there remain some uncertainties for pre-March 2024 transactions.

Clause 10 - We support this clause but note that it is not retrospective so a public body may have already incurred a 15% SDLT liability in circumstances that appear contrary to policy.

1. Clause 7: Abolition of multiple dwellings relief for SDLT

1.1 This clause abolishes SDLT Multiple Dwellings Relief (MDR) from 1 June 2024 subject to transitional provisions. MDR is a relief from SDLT for purchases of two or more dwellings. It works by reducing the SDLT payable per dwelling so it is closer to the amount payable on the purchase of a single residential property. The policy aim was to remove a barrier to investment in the private rented sector, particularly for forward funding of residential development.

1.2 The government was concerned about inappropriate use of MDR and the mixed property rule. A stage one consultation on options for possible reform of both MDR and the SDLT treatment of mixed (residential and non-residential property) purchases closed in February 2022. The outcome was finally published at Budget 2024; MDR is abolished however the government confirmed that it will not be making any changes to the SDLT rules for acquisitions of mixed residential and non-residential property.

1.3 In February 2023 the government commissioned an evaluation of MDR[1] and this was published shortly after Budget 2024. The evaluation includes surveys of MDR claimants that

[1] https://www.gov.uk/government/publications/stamp-duty-land-tax-relief-for-multiple-dwellings-evaluation

have claimed MDR on business and private transactions between April 2019 and September 2022.

1.4 The government's policy paper[2] indicates that:

"An external evaluation of MDR carried out as part of HMRC's Tax Reliefs Evaluation Programme found no strong evidence that the relief plays a significant role in supporting residential property investment, and that it has a minimal positive impact on overall housing supply or PRS [private rented sector] supply. The evaluation has shown that MDR is not cost effective in meeting its original objectives ".

1.5 The government's commitment to consulting upon proposed changes and evaluating the relief is to be welcomed. However, we observe that the findings of the evaluation study present a more nuanced conclusion than the summary in the policy paper might indicate. The report states that:

''These findings should not be considered conclusive evidence of MDR failing to reach its objectives of reducing barriers for purchasing residential property with a view to supporting supply in the private rented sector. The self-reported influence of MDR on strengthening demand has limitations due to potential biases in claimants' perceptions and the complexity of accurately attributing changes in behaviour to the presence of a tax relief'.

1.6 In addition, in terms of the effect of MDR on the property market:

"The wider literature review identified a very limited number of high-quality empirical studies which attempt to measure the impact of transactions taxes on property and rental market outcomes, and no studies that examined the impact of MDR specifically."

1.7 In the absence of a strong evidence base it is possible there may be unintended consequences on funding for certain sectors such as the build to rent sector, purpose built student accommodation and other communal accommodation sectors.

1.8 We note that the government will engage with the agricultural industry to determine if there are any particular impacts for the sector that should be considered further and provision is made for MDR to be retained by Treasury regulations (see Clause 7(9) and (10)).

1.9 It is not clear from the evaluation why one sector has been identified as requiring further assessment of the impacts but not others.

1.10 MDR was introduced in June 2011, shortly after non-residential rates and residential rates had begun meaningfully to diverge (with the introduction of the 5% top rate of SDLT for residential property, in contrast to the 4% top rate of SDLT for non-residential or mixed property). Especially with the "slab" system of SDLT[3] applicable at the time, a buyer wanting to acquire multiple dwellings for the private rented sector or development would be pushed into the highest rate of SDLT based on the total price for all of the properties. The aim of

[2] https://www.gov.uk/government/publications/stamp-duty-land-tax-abolition-of-multiple-dwellings-relief-from-1-june-2024/stamp-duty-land-tax-abolition-of-multiple-dwellings-relief-from-1-june-2024

[3] The slab system operated for SDLT until 2014. It meant that where the price paid for a property exceeded a rate threshold, the higher rate applied to the total price not just the amount exceeding the threshold, as is the case now.

MDR was to ensure that these types of acquisitions would be taxed based on the average value of each dwelling.

1.11 For larger scale investors, there is the option for purchases of six or more dwellings to be taxed at non-residential rates[4], which would at least limit the rate of SDLT to 4% (at the time, increasing to just under 5% from 2016). However, this option is not open to a smaller investor buying five or fewer properties.

1.12 The divergence between the rates applicable to residential property and those applying to non-residential property is now much more profound than was the case when MDR was introduced (currently there is a top residential rate of 17% compared to a top rate of 5% for non-residential/mixed property), and the withdrawal of MDR will expose this, creating anomalies, three of which we note below.

Smaller-scale investors

1.13 The abolition of MDR raises a barrier to entry for smaller-scale investors in the residential sector. Absent MDR, buyers able to acquire six or more dwellings in a single transaction enjoy a rate that approaches (but never quite reaches) 5%. Without MDR, this will mean that they are likely to be paying SDLT at a lower rate than an investor buying five or fewer dwellings.

1.14 By way of example, a developer constructs eleven dwellings, each worth £200,000. One buyer (UK resident) acquires five dwellings, another buyer (wherever resident) acquires six.

Without MDR:

- The buyer of five dwellings would pay total SDLT of £71,250 on current SDLT rates; but
- The buyer of six dwellings would pay total SDLT of £49,500.

This compares to, under current rules (i.e. with MDR in place):

- The buyer of five dwellings pays £30,000 on current SDLT rates; but
- The buyer of six dwellings pays £36,000 if UK-resident (and £49,500 if not[5]).

1.15 Is this consequence intended? It may lead to buyers of five or fewer dwellings seeking to argue that the non-residential/mixed rates apply for some other reason, perhaps by attempting to acquire property containing a non-residential element.

Non-resident purchasers

1.16 The SDLT surcharge for non-UK resident purchasers of residential property (NRS) was introduced with the aim of encouraging UK ownership of residential property by adding additional cost for non-UK residents. The abolition of MDR may not be consistent with this aim.

1.17 As long as MDR was in place, UK resident buyers of residential property had a competitive bidding advantage over non-UK resident buyers. In the calculation of their SDLT liability,

[4] Finance Act 2003 section 116(7)

[5] The non-UK buyer would not claim MDR as this would result in a larger SDLT liability for them.

both types of buyer would be subject to the 3% higher rate for additional dwellings, but the UK resident buyer would not also be subject to the 2% NRS.

1.18 Practically, the effect of NRS was that non-UK resident buyers would not claim MDR when acquiring six or more dwellings. Their SDLT liability would be *at least* 5% of the chargeable consideration for the acquisition. Without a claim for MDR, the non-UK resident buyer would pay *not more than* 5% under the non-residential rates regime deemed to apply by reason of the number of dwellings that they acquired.

1.19 Because UK buyers could enjoy an advantage of up to 2% of the value of a residential deal, they were able to bid more competitively for dwellings.

1.20 Is the effect of the abolition of MDR consistent with the government's policy towards non-resident investors in residential property?

Transitional arrangements

1.21 A final anomaly is that the abolition of MDR includes provisions that 'de-link' pre-abolition transactions that enjoyed MDR from post-abolition transactions that would otherwise be linked with them. This may produce unfavourable and uneven outcomes.

1.22 Example 1 (Non-residential element of MDR claim pre-abolition)

Assume one UK resident buyer intends to acquire ten dwellings and a commercial unit in linked transactions. Each of the dwellings, and the unit, is worth £200,000. The buyer acquires four dwellings in four single transactions, and a fifth dwelling and the commercial unit in a further single transaction , before abolition. They acquire five after abolition, with MDR unavailable.

If they claimed MDR on the pre-abolition transactions, then their SDLT liability across the transactions would be £105,500, broken down as follows:

- £34,250 on the pre-abolition transactions[6]; and
- £71,250 on the post-abolition transactions.

By contrast, if they did not claim MDR on the pre-abolition transactions, then their SDLT liability would be £99,500 (total consideration of linked transactions at non-residential/mixed use rates because all linked to the pre-abolition mixed transaction).

Example 2 (Six or more rule – s 116(7))

Assume one UK resident buyer acquires eleven dwellings in linked transactions. Each of the dwellings is worth £200,000. The buyer acquires six dwellings before abolition. They acquire five after abolition, with MDR unavailable.

If they claimed MDR on the pre-abolition transaction, then their SDLT liability across the transactions would be £107,250, broken down as follows:

[6] £26,000 (£200,000 *1% £800,000 *3%) on the five dwellings, and £8,250 on the commercial unit (being non-residential SDLT on £1.2m of linked transactions £150,000 *0% +£100,000 *2% +£950,000 *5% = £49,500 apportioned :£200k/£1.2m)

- £36,000 on the pre-abolition transaction (£6k per dwelling on six dwellings at an effective rate of 3%); and
- £71,250 on the post-abolition transaction.

  By contrast, if they did not claim MDR on the pre-abolition transaction, then their SDLT liability would be £99,500 (total consideration calculated at non-residential/mixed use rates section 116(7), one nil rate band across all transactions).

1.23 So, the 'de-linking' rule puts the buyer at a significant disadvantage for having claimed SDLT MDR on the first transactions. If the government wishes to proceed on this basis, then we suggest consideration should be given to how, MDR can be disclaimed, having previously been claimed.

2. Clause 8: First-time buyers' relief from SDLT: acquisition of a new lease on bare trust

2.1 This clause corrects a defect in the legislation for first-time buyers' relief removing a pitfall for buyers and is therefore welcome. The clause has effect for transactions on/after 6 March 2024.

2.2 The changes in the clause follow representations made by the CIOT and the Stamp Taxes Practitioners Group (STPG) in January 2023. These were set out in a briefing note on the Stamp Duty Land Tax (Reduction) Bill provided to parliamentarians at the time. During Lords debate on the Bill Baroness Kramer (Lib Dem) noted the 'loopholes and anomalies' identified by CIOT and the STPG and asked the government to investigate them further. In response, the minister, Baroness Penn, told peers: "We have asked officials in HMRC and the Treasury to work with those groups to discuss their comments."[7] This legislation is a result of that process.

2.3 Typically when acquiring a dwelling in a new development the purchaser is granted a long lease rather than the acquiring a freehold interest. A first-time buyer who wants to protect their identity for security reasons, such as in situations where a buyer has an abusive partner or has been subject to stalking and harassment, may wish to buy in the name of a nominee (such as a professional person or company). Also, a first-time buyer who is aged 17 or less when buying a property cannot buy in their own name but must buy through a nominee – this would include where guardians of a child wanted to buy a property in the child's name. In such cases, the nominee is granted a new lease to hold for the first-time buyer. First-time buyers' relief was not available because the nominee was treated as the buyer and they could not claim the relief as it is the underlying buyer, not the nominee, who intends to live in the property as their only or main residence.

2.4 This clause solves the issue by ensuring the underlying purchaser not the nominee is treated as the purchaser of the lease and therefore eligible for first-time buyers relief if all the conditions are satisfied.

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[7] The Lords debate is summarised at https://www.tax.org.uk/ciot-concerns-recognised-as-sdlt-bill-passes-through-lords . The briefing and HMRC's letter of response can be read at https://www.tax.org.uk/ref1070

3. Clause 9: Exemption from SDLT: registered providers of social housing etc.

3.1 This clause clarifies certain aspects of the existing SDLT exemption for acquisitions of social housing by registered providers in FA 2003 section 71. The stated purpose of the exemption is to support the provision of social housing by registered providers. It applies where the purchaser is a qualifying registered provider of social housing and the purchase is funded with the financial assistance of a public subsidy. The clause amends the current exemption by:

- Updating outdated references following changes to social housing legislation;
- Extending the definition of 'public subsidy' to include receipts of the disposal of social housing; and
- Amending the definition of registered providers of social housing to confirm certain entities such as English local authorities are eligible for the exemption, removing an uncertainty.

The changes apply to transactions on or after 6 March 2024.

3.2 The changes are welcome in removing uncertainties and updating the legislation for changes in social housing legislation. We think it might be helpful to include a regulatory power in case of the need to update in the future instead of having to wait for space in a Finance Bill to make updating changes.

3.3 Note 17 of the Explanatory Note says (our emphasis in bold):

17. This clause ensures that the exemption from SDLT for certain acquisitions by registered providers of social housing is up to date following changes to social housing legislation. This includes updating the definitions of registered providers of social housing to remove uncertainty for some registered providers of social housing (such as local authorities) as to their eligibility for the exemption. It also makes clear that the exemption applies for all registered providers where public subsidy is recycled for the provision of new social housing. **This ensures that the exemption continues to operate as intended.**

3.4 The wording has given rise to a degree of uncertainty as although the change is prospective only in the draft legislation, the note might be understood to indicate it is intended to apply retrospectively on the basis that the amendments are clarificatory in nature. The question is relevant to pre-6 March 2024 acquisitions by local authorities funded by right-to-buy receipts that do not include any element of recycled qualifying public subsidy.

3.5 For acquisitions post- 6 March 2024 it is clear that there is now no requirement to demonstrate that right to buy receipts include an embedded qualifying public subsidy. The receipts from that disposal will automatically qualify as public subsidy where the purchaser is entitled to use an amount from those receipts to help fund the provision of social housing.

3.6 We understand that for transactions that took place prior to 6 March, HMRC's position remains as set out in the manual guidance that it is necessary to show that the property disposed of (that generated the right to buy receipts) must have originally been funded by a qualifying public subsidy as defined in section 71. Where the original source of the subsidy

being recycled to acquire new social housing is one not listed at section 71, then the exemption conditions are not met for transactions prior to 6 March 2024.

4. Clause 10: Purchases by public bodies not to be subject to special 15% rate of SDLT

4.1 This clause removes public bodies (as defined) from the scope of the 15% SDLT charge that is aimed at deterring the purchase of residential property via a company or other corporate vehicle with the aim of removing a SDLT liability on a subsequent sale of the shares in the company and for no other commercial purpose. The removal of the charge for public bodies is consistent with the original policy intent and the same approach is already taken for the Annual Tax on Enveloped Dwellings that has the same policy objective.

4.2 We support this amendment but note that it is not retrospective so a public body such as a local authority may have already incurred a 15% SDLT liability in circumstances that appear contrary to policy. Is this intended?

5. The Chartered Institute of Taxation

5.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. 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. 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.

5.2 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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

5.3 The CIOT's 20,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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The Chartered Institute of Taxation
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