

# Additional SDLT and the mixed property

**Julie Butler** discusses the tax planning opportunities available to purchasers of mixed residential and commercial properties, particularly in the farming community



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**A** new higher set of stamp duty land tax (SDLT) rates ('surcharge rates') was applied to dwellings that qualify as 'additional residential properties' (ARPs) from 1 April 2016. As well as the buy-to-let (BTL) properties and second homes to which the Autumn Statement referred, the surcharge will apply to all purchases of dwellings by companies, commercial partnerships, and trustees of discretionary trusts.

The legislation to apply the SDLT supplement is contained in clause 117 of the draft Finance Bill 2016, which is expected to receive royal assent later this summer or this autumn. HMRC has provided detailed 'Stamp Duty Land Tax: higher rates for purchases of additional residential properties' guidance notes.

## SDLT rates

The 'mixed' rate is 5 per cent, which can be of real advantage to the purchaser of property that qualifies as a mix of residential and commercial property in England (but not Scotland). The HMRC website defines a mixed-use property as 'one that has both residential and non-residential elements, e.g. a flat connected to a shop, doctor's surgery, or office'.

Now the date for the new rules has passed, the real impact of the SDLT changes is upon us. The twists and turns of each practical case will help with future planning.

It has always been the case that the residential rates of SDLT do not apply to the purchase of commercial property and residential property together – 'mixed purchases' – under one contract (even if they are distinct and unconnected plots), and that continues to be true for the purposes of the 3 per cent surcharge. Therefore, the vendor must not be permitted to separate the sale into

two parts, one including the commercial land and one consisting of any of the residences.

A slab system now applies to commercial property purchases. The rates are 2 per cent for properties between £150,000 and £250,000 and 5 per cent for those over £250,000, so the SDLT on purchase can still be a heavy burden, but not as heavy as with purely residential property.

## Farming community

The favoured status of 'mixed property' has therefore remained. Any purchaser entering a mixed transaction will avoid the surcharge entirely. Someone buying, say, a farmhouse and four cottages will pay at the surcharge rates on all five dwellings, although a 'replacement main residence relief' (RMRR) claim may be possible on one of them.

But if the purchase is of mixed property because, say, 300 acres of agricultural land are also included, the non-residential SDLT rates will apply, under which the top rate is only 5 per cent. With the mixed rate at 5 per cent, there are distinct advantages to buying an expensive house with land, i.e. mixed use.

The mixed property could be, for example, a large house (perhaps a former farmhouse) and some agricultural land and it can qualify for the mixed rate at 5 per cent. This does produce some SDLT planning opportunities for those wanting to buy a sizeable house with a few working acres. The reduced SDLT could be considerable given the top stamp duty rate on residential property is 15 per cent.

Such an opportunity could also help the farming community in the current period of lack of profitability. Imagine the scenario where a large, old, run-down farmhouse is owned by the farming family. A smaller, more convenient house

(such as a converted barn or cottage) can be moved into. The large farmhouse with a few acres can be sold with principal private residence relief on the house and rollover relief or, say, 20 per cent capital gains tax (CGT) on the land (the rate applies from 6 April 2016).

The new, smaller house is much more likely to achieve the 'character appropriate' test for a farmhouse under section 115 of the Inheritance Tax Act 1984.

The purchaser buys with a reduced 'mixed rate' for SDLT and, should this be a second property, no additional rate. Happy tax planning all round.

### Replacement properties

Individuals who do not own another dwelling on the completion day will not pay the surcharge when they buy a dwelling, whether it is their main residence, a holiday or second home, or a BTL investment. Standard SDLT and, for Scotland, land and buildings transaction tax (LBTT) rates depend on whether a transaction is classified as residential or non-residential. The SDLT surcharge will not apply to non-residential transactions even when they include an element of residential property.

However, the LBTT surcharge is payable on the residential element of non-residential (mixed) transactions on a just and reasonable apportionment. The result is that the purchase of a house and land could incur the surcharge in Scotland but not in the rest of the UK.

Those purchasing property and replacing their main residence will be able to claim one of two sorts of time-limited SDLT relief, if they already own one or more ARPs. If someone sells their main residence and buys its replacement in the following 18 months, the surcharge will not be payable on the replacement. Someone buying a replacement main residence while retaining the old one will pay the surcharge, but will be refunded if the old one is sold within 18 months afterwards.

This has come as quite a shock to some purchasers post 6 April 2016 who have, for example, retired and bought their new house before selling the farmhouse and had to pay additional rate SDLT to reclaim at a later stage. That refund position clearly represents a cashflow disadvantage. The period of 18 months is quite a short time to sell in a difficult market. The ability to obtain a refund is slow and the burden must be planned for.

### Main residence

Married couples and civil partners are treated as one person, unlike those who cohabit. Therefore,

if a property is owned by one of the married couple, this will mean the additional rate applies to the second purchase. If minor children own an interest in a dwelling, this may be imputed to their parents. On this basis, parents of such 'property-owning' children must take care. When they buy a main residence they will pay the surcharge unless they can claim RMRR.

The question of what constitutes a main residence will be question of fact. No CGT-style election will be available. Answering this 'question of fact' may sometimes be quite difficult for those involved. Owning a dwelling anywhere in the world will count for SDLT. These rules mean that qualifying for RMRR will be particularly significant for those with homes abroad, which, for this purpose, includes Scotland, where there are different rules and the LBTT. The only interests in dwellings that will not count are those worth £40,000 or less. It is fair to say that there are not many properties in the UK at this level.

The purchaser should not have to pay the supplement if they are replacing their main home, but the supplement is due on the entire purchase price where the purchaser acquires a property which comprises two residences or dwellings. Where a property has an annexe which can be occupied independently from the main home, such as a 'granny flat', the SDLT supplement could apply, even if the whole property was defined on a single set of deeds and the annexe could not be sold separately from the main property.

A parliamentary statement of 11 April 2016 clarified that there could be some refund of SDLT due. The SDLT supplement will not apply to houses with annexes where the annexe cannot be sold separately and it is not worth more than one-third of the main property. An amendment will be made to the Finance Bill 2016 to make that clear, and HMRC will publish further detailed guidance. Councils have also been advised not to apply council tax separately on annexes.

As mentioned, if the SDLT supplement has been paid on a property which is to replace the main home, then an application to HMRC for a refund of SDLT can be made. Properties in Scotland are subject to the LBTT, which also has a 3 per cent supplement for second homes, but the LBTT rules are different from the rules for the SDLT supplement (as explained previously).

It is clearly essential for advisers to understand the rules and to plan ahead. With the original advantage of mixed rates and now the additional advantage of no ARP penalty of mixed purchases, planning around selling houses with additional land will be key. S J



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