

Don't Push SDLT Mixed-Rate Claims

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The purchase of a farm provides the owner with many potential tax reliefs, from rollover relief for capital gains tax (CGT), and possible inheritance tax (IHT) relief on death or gifting. But what about Stamp Duty Land Tax (SDLT)? The benefit of mixed usage has been in the spotlight, particularly for uncommercial smallholdings. A recent case of *J and C Averdieck v HMRC* (TC8623) has stretched the benefit of the allowability of the relief and really hit the headlines and the attention of the national newspapers. The founder of Gu chocolate desserts has been forced to pay an approximate £120,000 tax bill after losing an SDLT case over the acquisition of his £3m country home and the erroneous mixed rate claim.

Reclaim of SDLT paid

James Averdieck, 56, and his wife, Charlotte, purchased the 14-acre home in August 2020 – the address was not disclosed in legal documentation – with the couple initially paying £258,630 SDLT. However, they used a “tax refund company” to request HMRC return £119,180 to them due to the ‘mixed use’ of a public footpath at the edge of the property. The claim for the refund was on the basis that a footpath which ran across the rear of the property was classed by the local highway agency as a public highway, so Mr and Mrs Averdieck – as owners of the land – had to ensure the footpath was safe for people to use. They also said the path restricted their use of the land and did not contribute to their “reasonable enjoyment of the dwelling”. At first glance, such a basis of reasoning would appear flimsy.

HMRC refused the reclassification. Mr and Mrs Averdieck appealed to the First-tier Tribunal (FTT). They claimed that because the highway was used by a farmer to gain access to his farm, this constituted commercial use of the land. The FTT noted that the footpath was, in fact a lane which also provided access to Mr and Mrs Averdieck’s

and other people's properties. Further, the judge agreed that they had 'statutory obligations as does every other owner of a bridleway or public footpath.' When Mr and Mrs Averdieck bought the property, they tried to exclude the lane from the purchase but could not do so – it was, in effect, part of the 'package'.

Lessons to be learnt

The judge went as far as to warn taxpayers to be cautious when using tax refund agents, which have caused controversy of late, particularly on the SDLT mixed-use relief. There has been criticism of tax specialists sending unsolicited letters to buyers where it encourages weak claims. The judge was scathing: 'Whilst I accept that the farmer's business is a commercial operation, it is conducted on his farm. It is no more conducted in the lane than it is on the main road.' As many tax advisers are aware, HMRC has been cracking down on SDLT mixed-use claims and cases going through the tribunals are numerous, eg *Hyman* and *How Developments*. HMRC has also been tough on spurious attempts to obtain Multiple Dwellings Relief, for example, by stating that a bedroom is a studio flat and a dwelling in its own right!

A positive to take from this is that perhaps the focus of the national press on the negatives of weak claims and claims promoted by "cold calling specialists" and also tax specialists who support weak claims will help discourage these types of claims. Mixed-use SDLT for purchasing small farms of commercial use and a residence can and should still qualify under the current legislation. Those clients purchasing small farms can use SDLT mixed-use relief, and it can be a very useful tax saving for genuine commercial operations.



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