

## Multiple dwellings relief

### (Lecture P1234 – 20.14 minutes)

With effect for transactions after 19 July 2011, a new relief became available called multiple dwellings relief (MDR). The rate of SDLT is determined by reference to the total consideration divided by the number of dwellings, with a minimum of 1%. The consideration is then multiplied up again by the number of dwellings. It is on an averaged basis so you do not calculate according to the value of each component (which is a common misunderstanding of these provisions).

It can apply where more than one dwelling is transferred even where non-dwellings are also involved. It cannot include the purchase of a freehold or leasehold interest subject to a long lease of 21 years or more. It cannot apply where a higher threshold interest charge applies nor will that interest count for determining the number of total dwellings for establishing the percentage of charge that applies.

MDR is incredibly useful in terms of reducing SDLT liability and it is important to note that it can be used even where the second dwelling is currently used as part of the main dwelling.

An example of the situation which shows the potential savings. Say someone buys a house for £1.5 million with a basement flat in it. Individually the flat would be worth around £200,000. The SDLT on a single property (no 3% supplement) of £1.5m is £93,750. For £750,000 of consideration ( $£1,500,000/2$ ) the SDLT is £27,500 so the total with a MDR claim would be £55,000 ( $£27,500 \times 2$ ) giving a saving of £38,750. Ordinarily you would need to apply the 3% supplement when calculating MDR but in this instance the flat was only worth £200,000 so the subsidiary dwelling exemption was in point (see below).

However, it is important to note that we are seeing an increasing number of challenges from HMRC on the question of whether MDR is available. The cases below show this.

It is also important to note that the number of dwellings must remain the same for 3 years or there is a clawback of the relief.

#### *David Merchant and Sarah Gater v HMRC (TC07783)*

On 24 March 2016 David Merchant and Sarah Gater bought a property for £1,920,000. The property was a terraced house with an annex, with its own kitchen, shower room, living room and bathroom. The owners confirmed that the annex was accessed “through the main dwelling front door and along a common hallway”.

Initially, David Merchant and Sarah Gater filed the relevant form and paid the SDLT due to HMRC on the basis that the property was a single residential property.

However, just over a year later, they were advised to apply for MDR. On 20 April 2017 they wrote to HMRC to request an amendment to their return and claimed a refund of nearly £65,000.

HMRC opened an enquiry into the amended return and ultimately rejected the claim. There was a dispute over the date the return was amended. Although the First Tribunal found that it was not when the taxpayers first wrote to amend the return, but rather on receipt of their second letter that included the contract for sale. A valid amendment must be accompanied by the contract, so the later date was the date of amendment.

Although this made the claim out of time, HMRC accepted the late claim as a valid claim but disputed the MDR to which the claim related.

David Merchant and Sarah Gater appealed, arguing that they were eligible for the relief. Further, they argued that HMRC's closure notice was not valid as rejection of the claim for MDR was not stated in either their closure notice or the letter referred to in the closure notice.

The First Tier Tribunal concluded that, although the annex had a separate kitchen, shower room, living room and bathroom, it was not suitable for use as a single dwelling as it shared a common front door and hallway.

Further, the First Tier Tribunal found that the closure notice was valid even though it did not state that the claim for MDR was rejected. Adopting the reasoning set out in *Archer* [2018] STC 38, a notice is not ineffective for want of form where it is substantially in conformity with the legislation and its intended effect is reasonably ascertainable.

*Keith Fiander and Samantha Brower v HMRC (TC07676)*

Keith Fiander and Samantha Brower bought an unoccupied detached property for £575,000 on 27 April 2016. Attached to the main house was a self-contained annex, connected by a corridor with no door, although a door could have been fitted. The properties shared a post box, the utility supplies or there was only one council tax bill. The "Rightmove" website described the property as having three bedrooms with "bedroom 1" being in the annex and two loft rooms. It did not mention the annex. Further there was a restrictive covenant over the land to prevent more than one bungalow being built on it.

The taxpayers argued that the annex was separate from the house and claimed MDR. Under para 7 Sch 6B FA 2003 applies if two properties are each suitable for use as separate dwellings and if so, the SDLT rates can be averaged over the number of properties. The issue here was whether a house and annex were separate dwellings.

HMRC argued that the fact that a door could be installed to separate the annex from the main house was irrelevant. On purchase, this was a single dwelling.

The First tier Tribunal stated that the test we were dealing with was a test of "suitability" for use, rather than adaptation for use; and it is a test of use as a "single dwelling," rather than of use as separate living accommodation.

The First Tier Tribunal stated that to be suitable for use as a single dwelling, a property must accommodate all of a person's basic domestic living needs and that was the case here.

However, there must also be a degree of privacy and security. The Tribunal could imagine the annex being occupied by an older relative as a "granny flat", or by one of the owners' grown-up children, with this arrangement providing adequate privacy and security to occupants of both parts of the property, given family bonds of trust. However, without such close family ties, the First Tier Tribunal concluded that, with only an open corridor connecting the two, there was insufficient privacy and security for the occupants.

Finally, the decision should be made at the time of completion and on that date, there was nothing that indicated that there had ever been a physical barrier between the annex and the main house. The possibility of erecting a door to separate the properties after purchase was not relevant.

Interestingly, the Tribunal did not put a great deal of weight on the evidence that the annex had no separate utility meters or council tax status. Nor did they consider a single postal address to be a significant factor in this case. Finally, the Tribunal placed no weight on the “restrictive covenant” in the land registry, which they said was unclear in itself and in its implications for the issues in this case.

#### *Interaction between MDR and the 3% supplement*

It is important to appreciate the interaction between the MDR provisions and the 3% supplement. The latter applies by default when you are buying more than one dwelling in the course of a single transaction and this would normally automatically bring you into the 3% supplement provisions. There is, however, an exemption where the second property falls within the subsidiary dwelling exemption. This necessitates that second property being below a specified value.

Paragraph 5(5) Schedule 4ZA FA2003 states:

*One of the purchased dwellings (dwelling A) is subsidiary to another of the purchased dwellings (dwelling B) if:*

*Dwelling A is situated within the grounds of, or within the same building as, dwelling B, and*

*The amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to dwelling B is equal to, or greater than, two thirds of the amount of the chargeable consideration for the transaction which is attributable on a just and reasonable basis to the following combined*

*(i) dwelling A*

*(ii) dwelling B and*

*(iii) each of the other purchased dwelling (if any) which are situated within the grounds of, or within the same building as, dwelling B*

This is fairly straightforward legislation as long as the values work out. It is quite important to note that the wording of the legislation refers to the value of the dwellings which means you need to be careful if the transaction involves significant land.

Let’s go back to our example above of an individual buying a house with a basement flat. The whole property is worth £1.5 million. The flat would need to be worth less than £500,000 in order for the supplement not to apply. As the flat was worth £200,000 the 3% supplement did not apply in the MDR calculations.

The provisions get even more complicated where you have multiple dwellings in linked transactions. Where there are linked transactions, you amalgamate the consideration to work out the rate of SDLT but you could still claim MDR in this situation. However, for the purposes of the 3% supplement, you do not treat this as a multiple dwelling purchase, so you could have a situation where the 3% supplement is due on one of the purchases but not the other. The easiest way to look at this is to consider an example.

#### *Example 1*

Two properties are purchased in separate but linked transactions. So for example, a house is bought by an individual but an associated holiday cottage is bought from the same vendor by the individual’s limited company. No 3% surcharge arises on the main house as it is the replacement of a

main residence. The house is bought for £600,000 and the cottage for £200,000. We will assume that the normal SDLT rates apply (rather than the ones applicable up to 31 March 2021).

Without the surcharge (but with MDR), the SDLT on the total price is £20,000 (being 2 x £10,000 based on an average consideration of £400,000). With the surcharge, the SDLT on the total price is £44,000 (being 2 x £22,000 based on the same average consideration).

The actual calculation of the SDLT is then as follows:

$$600,000/800,000 \times £20,000 \text{ plus } 200,000/800,000 \times £44,000$$

This gives a total charge of £26,000.

#### *Interaction between MDR and mixed-use property*

Where property purchased is mixed use, including both residential and non-residential property, the rates used to calculate the SDLT liability are the non-residential rates. But if that property also includes multiple dwellings then you can, if beneficial, also claim multiple dwellings relief. Again, the easiest way to look at this is with an example.

#### *Example 2*

An individual is purchasing a farm for a total of £1.2 million including a farmhouse (£550,000), a furnished holiday let (£175,000) and agricultural land and buildings (£475,000).

The SDLT on the total of £1.2 million based on mixed use (so non-residential rates) is £49,500.

We then need to calculate the SDLT using residential rates on the two dwellings, but with the benefit of MDR. The SDLT (again using post 31 March 2021 figures) would be £16,250 assuming the 3% supplement is not due based on average consideration of £362,500 (i.e. the average of £550,000 for the farmhouse and £175,000 for the furnished holiday let).

The total SDLT payable using MDR would then be:

$$475,000/1,200,000 \times £49,500 \text{ plus } £16,250 = £35,844$$

So it is clearly beneficial to claim the MDR.

If the 3% supplement had been due (and in the case on which this was based, the 3% supplement was due because the FHL was not in the grounds of the original farmhouse), then the SDLT on the residential portion of the land would have been £38,000 and the total would have been:

$$475,000/1,200,000 \times £49,500 \text{ plus } £38,000 = £57,594$$

It would not be beneficial to claim MDR.

*Contributed by Ros Martin*