

Meaning of 'dwelling' for SDLT

(Lecture P1140 – 13.44 minutes)

The recent case of *PN Bewley Ltd v HMRC* (2019) concerned an appeal by a company against the amendment of an SDLT return that resulted in a fivefold increase in the tax payable by the purchaser in connection with a freehold residential property acquired on 24 January 2017.

The property was a dilapidated bungalow in Weston-Super-Mare which cost £200,000. The SDLT paid at the time of the purchase was calculated as:

	£
On first £125,000 @ 0%	–
On next £75,000 @ 2%	<u>1,500</u>
	<u>£1,500</u>

Towards the end of 2017, following an enquiry into the SDLT return, this charge was amended to:

	£
On first £125,000 @ 3%	3,750
On next £75,000 @ 5%	<u>3,750</u>
	<u>£7,500</u>

on the ground that the acquisition met all the conditions in Para 4 Sch 4ZA FA 2003 which made it subject to the higher rates of SDLT payable (i.e. the 3% surcharge). As a result, additional SDLT of £6,000 was due.

The following are the conditions referred to above:

- (i) the purchaser was not an individual;
- (ii) the subject-matter of the transaction consisted of a major interest in a single dwelling;
- (iii) the chargeable consideration for the purchase came to £40,000 or more; and
- (iv) the purchased property was not subject to a lease.

Clearly, (i), (iii) and (iv) were satisfied, but the dispute was whether the property was a 'dwelling'.

Para 18 Sch 4ZA FA 2003 describes what counts as a dwelling. A building is considered to be a dwelling if it is:

- used or suitable for use as a single dwelling; or
- in the process of being constructed or adapted for such use.

These words (apart from the reference to a single dwelling) are found elsewhere in the tax code – for example, see Sch 1B TCGA 1992 (as inserted by Para 15 Sch 1 FA 2019), which deals with the non-UK resident CGT charge, and the IHT rules for enveloped UK residential property interests in Para 8 Sch 10 F(No2)A 2017 – and so the decision in this case may well have a wider than expected significance.

The key issue here was whether the property in Weston-Super-Mare was suitable for use as a dwelling. This is obviously a matter where judgments can differ, which is a neat way of saying that cases will arise where the taxpayer argues that the property is not suitable for use as a dwelling and HMRC assert that it is.

The First-Tier Tribunal took the view that a building may be capable of being a dwelling, but may be unsuitable for this purpose at a particular point in time. The property in the PN Bewley Ltd case was in a very poor state of repair, with radiators and pipework removed (and the presence of what sounds like significant amounts of asbestos). The judges therefore concluded that the bungalow was not suitable for use as a dwelling. It was treated as a non-residential property and, as a result, the SDLT liability was reduced to 2% of the excess over £150,000, i.e. to £1,000.

The discussion contained in this judgment about the various factors to be taken into account (or not to be taken into account) when deciding whether a building is a dwelling will undoubtedly prove helpful in a number of different situations and for a variety of taxes.

Contributed by Robert Jamieson