



30 Monck Street  
London  
SW1P 2AP

T: 020 73400551  
E: info@att.org.uk  
W: www.att.org.uk

# STAMP DUTY LAND TAX: MIXED-PROPERTY PURCHASES AND MULTIPLE DWELLINGS RELIEF

## Response by Association of Taxation Technicians

### 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC consultation document 'Stamp Duty Land Tax: Mixed-Property Purchases and Multiple Dwellings Relief' ('the Consultation') issued on 30 November 2021<sup>1</sup>.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 It is inevitable that differential between residential and non-residential rates of SDLT in England and Northern Ireland will incentivise aggressive behaviour by a small number of taxpayers and their advisers in the use of the available reliefs. We welcome HMRC's early stage consultation to seek comments on the proposed solutions to tackle this. Our concern is that many of the solutions proposed for Multiple Dwellings Relief will affect other cases that would otherwise be within the scope of the intended policy objective. Rather than introducing more complexity for a large number of taxpayers over a specific issue - which arguably HMRC has clearly in its sights and is tackling successfully - this might be a good opportunity to stand back and look more broadly at the complex interaction between MDR and Higher Rates on Additional Dwelling (HRAD) and whether they are achieving their policy objectives before making further changes.

### 2 Mixed Property Apportionment

- 2.1 **Q1. What do you see as the advantages and disadvantages of apportionment?**
- 2.2 The primary advantage of apportionment is that there is an appealing logic in which residential rates are applied to residential elements of property and non-residential rates are applied to non-residential elements. We agree that this approach would remove the opportunity for purchasers to argue that small elements of an otherwise residential property were non-residential in a quest to benefit from the more favourable non-residential SDLT rates.

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<sup>1</sup> <https://www.gov.uk/government/consultations/stamp-duty-land-tax-mixed-property-purchases-and-multiple-dwellings-relief>

- 2.3 The disadvantage is that in order to calculate the SDLT figure an apportionment of the proceeds will need to be obtained. This may require a valuer to be instructed, increasing the costs of the transaction and potentially adding delay. Alternatively, it may be that the parties will seek to apportion the proceeds by agreement. We presume that in many cases apportionment between residential and non-residential may be relevant to the vendor's own tax position, as well as the purchaser's future CGT position, so it might be that an appropriate apportionment is already agreed as part of transaction work for other taxes which could be applied to the SDLT position. However, it will increase the uncertainty for the purchaser regarding final purchase costs as we presume that most vendors will not want to incur valuation costs for apportionment, or enter into detailed negotiations, prior to an offer being accepted, yet cannot establish their SDLT position with confidence until that is known. This may leave them in the difficult position of relying on the vendors' representations or their own best estimates until figures can be established. A large number of transactions which are currently relatively simple from an SDLT perspective will become more complex because of the additional work required. It may also increase the risk of SDLT transactions being amended within the following 12-month window.
- 2.4 If, during the purchase process, apportionments are determined to be significantly different to that envisaged so that the SDLT bill changes substantially, then some transactions may not proceed if the purchaser does not have sufficient funds for unforeseen costs. When making offers, prudent purchasers may opt to work on a 'worse case' scenario for SDLT and thus make lower offers.
- 2.5 We note also that the proposed method of calculating the SDLT under the method as proposed in Appendix A could easily be misinterpreted, as the approach of calculating the residential and non-residential elements on the whole of the proceeds and then scaling down is not immediately obvious. There is a small risk that some people may incorrectly assume they can simply apply the existing rates to each element in isolation, thus receiving effectively two nil rand bands. While no doubt this would be picked up quickly on submission, clear guidance will be needed in order to avoid any confusion.
- 2.6 **Q2 – What are your views on how the mixed-property rules interact with the other aspects of SDLT?**
- 2.7 The mixed property rules expand the range of circumstances in which a purchaser can access non-residential rates and benefit from a lower SDLT bill - and a simpler calculation - avoiding the complexities of HRAD and the non-resident surcharge. Without the rules, only purely non-residential purchases, or purchasers of six or more residential properties in a single transaction, would fall within the non-residential rates. The mixed property rules take transactions, including purchases of a pub with a manager's flat, a farm including farmhouse or a row of shops with flats above, out of scope of residential SDLT. It therefore has some equalising effect to the rule exempting purchases of six or more residential properties from residential rates.
- 2.8 **Q3 – What issues would arise in particular for mixed-property purchases that included an MDR claim if apportionment was introduced?**
- 2.9 Please see our answer to question 1.
- 2.10 **Q4 – What impact would apportionment have on both individual and business purchasers of mixed-property?**  
**Q5 – What impact would apportionment have on business transactions?**
- 2.11 In most cases, apportionment is likely to increase SDLT on the residential elements as a result of higher residential SDLT rates and the increased likelihood of HRAD. This will increase costs for a number of businesses

including purchasers of pubs, shops with flats, or farms where the purchase includes residential accommodation.

- 2.12 As noted in question 1, the process of establishing the necessary value is likely to increase costs and complexity. Where tax depends on the apportionment, we wonder if HMRC may wish to see formal valuations of the residential/non-residential split in some circumstances, which would add to the administrative burden. The increased uncertainty over the SDLT figure at the start of the process may affect buyers if the final apportionment results in a bill significantly greater than that budgeted for. Given that valuation is an art as much as science, should HMRC enquire into an apportionment and take a different view, there is a risk of additional SDLT and penalties as a result of disagreements over valuation.
- 2.13 **Q6 – What impact would apportionment have on others involved in the purchase, such as tax practitioners, conveyancers and valuers?**
- 2.14 The main impact for conveyancers will be in increased complexity. This may increase the need for a property tax professional to be involved, and introduce delays as a result of the need to obtain valuations. There may also be an impact on the mortgage application process if the SDLT figure is larger than expected and additional finance is required.
- 2.15 **Q7 – What would the impacts be on purchasers of having to value both the residential and non-residential elements of a purchase?**
- 2.16 The requirements will likely introduce delays and additional administration costs, as well as a higher SDLT bill. It may result in a period of uncertainty before valuations are obtained where the purchaser is working on an estimated figure for SDLT, and a further period of uncertainty following the submission of the return in the event that HMRC seeks to challenge the apportionment provided.
- 2.17 **Q8 – At what stage in a purchase could a purchaser expect to determine the relative values of the residential and non-residential elements of the property? For example, research, survey, consultation with a selling agent, or exchange.**
- 2.18 We assume that most purchasers are sensitive to the additional SDLT costs on top of purchase costs and will seek to make a reasonable estimate during research and following consultation with a selling agent to understand the position and prior to making an offer. The purchaser's level of sensitivity to SDLT, the time pressures due to other interested parties and the risk of wasting additional fees to determine the apportionment will all determine whether a purchaser seeks a formal valuation before or after offer. We presume in most cases apportionments will be finalised post offer, but prior to exchange of contracts, meaning there will be a modest increase in the risk of a purchaser potentially pulling out of a deal if the SDLT is found to be higher than expected.
- 2.19 **Q9 – Do you agree that apportionment would discourage abuse and give more equitable outcomes in calculating SDLT?**
- 2.20 In principle, we agree that the proposed approach would target the particular abuse that HMRC is concerned about. However, it will also have a wider effect on business and not just individual residential transactions where the majority of abuse is seen to be occurring.
- 2.21 We note that the method of apportionment could result in a perceived unfairness where the residential element is small, but the overall transaction figure is large, because the rates of residential property are so much greater once the total proceeds exceed £925,000.

2.22 **Q10 – Looking at the information in Annex A, do you have an alternative method of calculation for apportionment that would be effective in discouraging incorrect claims that the purchase of residential property is actually is of mixed-property?**

2.23 The example in Annex A gives an outcome for a property which is heavily weighed (98%) to residential. In the reverse situation, where the purchase price is high, but the residential element is small, there is an argument that the residential element is unfairly taxed at higher rates where MDR does not apply. This is because where MDR applies, then the residential element of SDLT is calculated ignoring the non-residential consideration, but if it does not, then the non-residential consideration is included such that a large non-residential element of consideration can push the residential computation into higher rates which would otherwise not apply. We note this is addressed in the response from the Chartered Institute of Taxation (CIOT) and we support their proposed solution.

2.24 **Q11 – What would be the impact of allowing mixed-property treatment only for transactions that reach a particular threshold of non-residential property? What should such a threshold be and why?**

**Q12 – What do you see as the advantages and disadvantages of allowing mixed-property treatment only where a minimum proportion of the consideration is in respect of non-residential land?**

2.25 This is a slightly cruder measure than apportionment, but would deal with HMRC's concern regarding purchasers who seek to identify a small element of non-residential within an otherwise residential transaction. However, it would introduce a cliff edge and, wherever the level is set, those around the threshold will still need to obtain a valuation/valuers' opinion and will seek to come within the limit to achieve non-residential rates.

2.26 **Q13 – Do you have alternative proposals to the ones set out in this consultation which would be effective in discouraging incorrect claims that the purchase of residential property is actually of mixed-property?**

**Q14 - How do the rules for mixed-property feature in commercial decision making?**

**Q15 – What would be the impact of changes to the mixed-property rules for businesses that typically make purchases of both residential and non-residential land, for instance corner shops, bed and breakfasts, pubs? Please consider both change in the form of apportionment and a threshold.**

2.27 We have not commented on these questions.

### **3 Multiple Dwelling Relief (MDR)**

3.1 MDR was introduced in 2011 with the stated policy objective:

“This measure reduces the rate of SDLT on a purchase of multiple residential properties so that it is closer to that charged when purchasing those properties singly. This will strengthen demand for and reduce a barrier to investment in residential property.”<sup>2</sup>

3.2 As the relief applies independent of the use to which the properties are put, it is available to any purchaser of more than one residential property in a single transaction. This results in an incentive to argue that a purchase consists of two properties when in fact this may not be objectively true. The consultation notes at

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<sup>2</sup> TIIN published 23 March 2011  
ATT/ATTTSG/Submissions/2022

- 5.8 that almost all of the incorrect claims are by private individuals seeking to argue that there is a secondary dwelling within their main residence, in order to bring themselves within scope of MDR.
- 3.3 We recognise HMRC's concerns about the abuse of this relief and agree that it is not acceptable for the relief to be claimed where there is no genuine annexe. While we can understand the desire to provide for a more robust defence to this approach, we think that in the longer term it would be more beneficial to review MDR as a whole to determine if it is achieving its intended policy goal.
- 3.4 In this section we have opted to answer a limited number of the consultation questions, focusing on question 23 in which we comment generally on each of the options.
- 3.5 **Q16 - What are respondents' views on the introduction of an intention test?**
- Q17 - What are respondents' views on the application of the proposed three-year post-transaction period?**
- 3.6 Intention tests are, in general, harder to prove for the genuine taxpayer and are also open to potential abuse. Intention tests increase administrative burden on both the taxpayer to establish and retain the evidence of their intention, and HMRC to test it and/or provide any clearance procedures.
- 3.7 In requiring the purchaser to evidence business use for a period of three years, both options 1 and 2 introduce a longer term uncertainty over the cost of the transaction as the purchase faces the risk of MDR withdrawal if for example, plans change, or unforeseen circumstances prevent business use over the period.
- 3.8 **Q23 - What do you see as the advantages and disadvantages of each of the options set out above?**
- 3.9 Option 1 would tackle the immediate mischief by excluding all private buyers from MDR. However, it acts very broadly and will exclude transactions which otherwise would have been genuinely within the scope of MDR. For example, a landed estate sold as one unit where the main house is used as a residence and a number of other properties on the estate are let. This option therefore affects transactions beyond those HMRC has expressed concerns about.
- 3.10 There is a potential risk that Option 1 might encourage taxpayers purchasing a residence with other rental properties to seek to split transactions to facilitate an MDR claim on a separate transaction. While the linked transaction rules should generally act to prevent this, it introduces another boundary pressure that HMRC would need to police.
- 3.11 Option 2 would allow for more flexibility and address the concern above but still has the additional burdens of an upfront intention test and longer term evidence test as noted in our answers to questions 16 and 17.
- 3.12 Option 3 links the definition of the subsidiary dwelling to the definition of HRAD. Essentially this boils down to the concept that if a subsidiary dwelling is large enough to be subject to HRAD, it can also benefit from MDR, but if it is small enough that HRAD would not apply, then MDR would not apply. There would appear to be some logical consistency to this and, while in boundary cases a valuation will be required, it does not require an intention test or ongoing review.
- 3.13 Option 4 – This is a similarly straightforward option, but again seems to have an effect beyond that of the specific mischief identified, and may affect smaller scale businesses or landlords seeking to purchase two properties to develop and not three. There does not seem to be an obvious reason to discourage smaller residential property investors further, given that HRAD may already be in point. The consultation notes that people may also be tempted to seek to show that were three properties instead of two. This will require more

imagination on the part of those seeking to advance an unjustified claim, but will presumably still leave HMRC needing to police this new boundary, albeit on a much smaller scale.

- 3.14 Q25 - Would options 1, 2 and 4 have any material negative impact on the purchase of property which contains, for example, an annex which is intended to provide accommodation to an aged or vulnerable person, typically a relative? If so, would option 3, either alone or in combination with the other options, present a solution to this negative impact?
- 3.15 It is difficult for us to comment on whether or not these changes would reduce the ability of a significant number of people from purchasing a property with a 'granny annexe', although some members have expressed concerns about changes here.
- 3.16 Given that options 1, 2 and 4 is would affect a much wider group of people, option 3 would be preferable in the absence of a wider review of the whole area.

#### 4 Contact details

- 4.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact us at [atttechnical@att.org.uk](mailto:atttechnical@att.org.uk).

#### The Association of Taxation Technicians

#### 5 Note

- 5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.