

## **New Stamp Duty Land Tax Relief for Acquisition of Multiple Dwellings**

**The Finance Bill 2011 introduced a new stamp duty land tax ('SDLT') measure aimed at kick-starting the residential property investment market. This relief was enacted on 19 July 2011 and applies to the acquisitions of interests in multiple dwellings where the 'effective date' of the transaction is on or after 19 July 2011. The legislation governing the relief is contained in a new Section 58D and Schedule 6B in the Finance Act 2003.**

Where the conditions for this relief are met, the rate of SDLT which applies to the consideration for the acquisition of the dwellings is determined by dividing the total consideration for all of the dwellings by the total number of individual 'dwellings'. The SDLT is then calculated on the average consideration for each dwelling using the current SDLT rates but subject to a minimum charge of 1%.

Prior to the introduction of this relief, the SDLT was calculated at the rate applicable to the aggregate consideration. The fact that the consideration attributable to an individual dwelling may have been under the SDLT threshold (or band for a particular rate) was disregarded if the total consideration for the transaction exceeded the SDLT threshold (or band for a higher rate).

The relief must be claimed in the land transaction return using the generic code 28. HMRC has indicated that a specific code for this relief should be available by October 2011.

The remainder of this note discusses the main provisions of the relief in greater detail.

### **Date of availability of relief**

The relief is available for a transaction:-

- 1.** which has an 'effective date' on or after 19 July 2011. The 'effective date' for SDLT

purposes is the date which is the earlier of the date of completion of the transaction and the date of substantial performance of the contract by the purchaser; and

2. which is not linked with any other transaction with an effective date before 19 July 2011 except
  - i. an option binding the grantor to enter into the later transaction; or
  - ii. a right of pre-emption restricting the right of the grantor to enter into the later transaction

### **Transactions which qualify for the relief**

The legislation provides that (subject to certain exceptions) the relief applies to ‘relevant transactions’. A relevant transaction is one:-

1. whose main subject matter is the acquisition of an interest in more than one dwelling; or
2. a transaction which is one of a series of ‘linked’ transactions, the main subject matter of which includes the acquisition of at least one dwelling and where at least one of the transactions with which it is linked includes the acquisition in at least one dwelling.

Transactions are ‘linked’ for SDLT purposes if they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser, or in either case, persons connected with them.

### **What is a dwelling?**

The legislation defines a dwelling as a building or part of a building which is suitable for use as a single dwelling or which is in the process of being constructed or adapted for such use.

A dwelling also includes land which is to be occupied or enjoyed with the dwelling, for example, a garden. Whether the land is occupied or enjoyed with the dwelling will be a question of fact.

### **Superior interests in a dwelling**

A superior interest in a property which contains a dwelling is deemed to be an interest in that dwelling when determining whether a transaction is a ‘relevant transaction’.

However, the relief will not apply to the acquisition of a superior interest where it is an interest which is subject to a lease of the dwelling which was granted initially for a term of 21 years or more.

### **Example**

An investor buys four flats for £800,000. Under the old rules SDLT would be chargeable at 4% on the total consideration (£32,000).

Two of the flats are subject to leases of 99 years. Under the new rules, the relief will only be available for the two flats which are not subject to long leases. The total consideration needs to be apportioned between the qualifying two flats and the non qualifying flats (say £500,000 and £300,000 respectively). SDLT will be payable on each of the two qualifying flats at 1% (i.e. the rate applicable to £250,000 which is the average price for each of the two flats) (£5,000) and on the remaining two flats at 4% (which is the rate applicable to the total consideration disregarding the relief) (£12,000). The total SDLT payable is £17,000 which represents a saving of £15,000.

### **Acquisition of dwellings ‘off plan’**

If certain conditions are met, the acquisition of an interest in multiple dwellings ‘off plan’ will qualify for the relief. The conditions are:-

- 1.** there must be a contract to purchase a building or part of a building which is to be constructed or adapted for use as one or more dwellings;
- 2.** the contract is substantially performed before the construction of the building has commenced; and
- 3.** the effective date of the transaction is deemed to be the date of substantial performance of the contract under SDLT legislation.

### **Calculating SDLT using the relief**

The consideration used when calculating the SDLT is the total consideration for the transaction

and any transaction which is linked to that transaction which is attributable to dwellings, divided by the total number of dwellings.

The rate of tax is then applied to each dwelling individually with the applicable rate for that amount of consideration subject to a minimum rate of 1%.

The usual rule of aggregating consideration for linked transactions is disregarded for transactions which qualify for the relief. Furthermore the rule which provides that the acquisition of six or more residential properties will be treated as a commercial acquisition (with associated rates for commercial property) is also disregarded.

Where the consideration for the transaction is partly attributable to something other than qualifying dwellings, the consideration must be apportioned on a 'just and reasonable' basis. SDLT is then calculated separately on this part of the consideration using normal rules and using the rate that would be applicable if no relief was available for the dwellings i.e. the rate applicable to the total consideration for the transaction.

### **Example**

An investor buys five flats for £150,000 each and a shop for £400,000. The total consideration is £1,150,000. Under the old rules SDLT would be chargeable at 4% on the total consideration (£46,000). Under the new rules SDLT will be payable on each flat at 1% (£7,500) and on the shop at 4% (being the rate applicable to the total consideration disregarding the relief) (£16,000) making the total SDLT payable £23,500 which represents a saving of £22,500.

Where part of the consideration is in the form of rent, the normal SDLT rules for calculating rent will apply. The relief only applies to the consideration which comprises the premium for the acquisition of the dwelling.

### **Clawback of relief**

There will be a clawback of the relief in situations where:-

1. relief has been claimed;
2. an 'event' occurs during a 'relevant period' following the effective date of the transaction; and
3. if that event had occurred immediately before the effective date, either the transaction would not have qualified for the relief or a higher rate of tax would have been chargeable on the dwellings.

An 'event' includes any change of circumstance but does not include an onward sale of individual dwellings.

The 'relevant period' is the period ending three years after the effective date of the transaction or, in respect of a dwelling, the date on which the purchaser disposes of that dwelling to an unconnected third party.

### **Example**

An investor purchases two adjoining dwellings for conversion into a single dwelling. If that conversion occurs within three years from the effective date of the transaction, the relief will be disapplied and SDLT will be due as if it was a purchase of a single dwelling for the total consideration which was paid.

### **Conclusion**

The introduction of this relief should be a welcome break for property investors. It is hoped that this will encourage investment in residential property which will in turn make more properties available for renting. However, it is also hoped that this relief will not 'push' out those individuals who are seeking to purchase houses or flats for occupation.

This note is only intended to provide general guidance and is not intended to constitute legal or taxation advice.

**If you would like to talk to us about the issues raised by this note, please contact:**

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