

SDLT AND THE PUNATIVE RATES FOR RESIDENTIAL PROPERTY

The difference in the SDLT rates on the acquisition of residential property on the one hand and non-residential and mixed property on the other is massive.

If an individual buys a house for £10m the SDLT is :

Purchase price bands (£)	Percentage rate (%)	SDLT due (£)
Up to 125,000	0	0
Above 125,000 and up to 250,000	2	2,500
Above 250,000 and up to 925,000	5	33,750
Above 925,000 and up to 1,500,000	10	57,500
Above 1,500,000+	12	1,020,000
	Total SDLT due	1,113,750

If the property purchase by the individual does not fall within the definition of residential property the SDLT is 4% i.e. £400,000.

AM I BUYING RESIDENTIAL PROPERTY?

Let us apply the tests to a situation where Mr X buys an office block with full planning permission to convert the same into dwellings which he intends to and does implement – what rates of SDLT are payable?

FA 2003 s116(1) defines residential property to mean —

a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use.....

and “non-residential property” means any property that is not residential property.

The word dwelling is not defined.

Note there are in the ATED provisions (annual tax on enveloped dwellings) – FA 2013 s113(1)(a) – and in the SDLT provisions which charge the 15% SDLT rate - in FA 2003 Sch 4A para 7(5)(b) – and in the draft legislation to charge non-residents who make gains on disposals of UK residential properties after 5/4/15 special provisions which extend the definition of residential property to include off-plan purchases of residential property to be constructed but these do not apply to the normal cases.

The VAT legislation provides some guidance in VATA 1994 Sch 8 Group 5 Note (2) thus:

“A building is designed as a dwelling or a number of dwellings where in relation to each dwelling the following conditions are satisfied—the dwelling consists of self-contained living accommodation....”

So if the property acquired consists of an office or commercial use property (which is to be converted to residential property) there will be no bedrooms and family kitchens and toilets and TV rooms and dining rooms and hence there will be no dwellings. There is no reason to restrict the definition to self-contained units for SDLT purposes, so flats with shared areas would also qualify.

HMRC MANUAL SDLTM20076

HMRC provide the following guidance:

SDLTM20076 - Reliefs: disadvantaged areas relief:

Residential and non-residential property: further notes

In most cases, there will be no difficulty in establishing whether or not a property is residential property.

Use at the effective date of the transaction overrides any past or intended future uses for this purpose. If a building is not in use at the effective date but its last use was as a dwelling, it will be taken to be ‘suitable for use as a dwelling’ and treated as residential property, unless evidence is produced to the contrary.

Undeveloped land is essentially non-residential but may be residential property if, at the effective date, a residential building is being built on it.

Where, at the effective date, an existing building is being adapted or **marketed** for, or restored to, domestic use, it is treated as residential property. (Tax Editor’s emphasis in bold)

The concern on this statement is a reference to a property being residential if it is an existing building which is marketed as residential.

This guidance goes beyond the legislation which is restricted to the four heads of

use,
suitable for use,
process of construction and
process of adaptation.

However it may be prudent to come within the guidance if possible and ensure that on the property acquisition date no marketing of the property has commenced.

Be that as it may the Tax Editor is firmly of the view that if works had not commenced at the effective date (normally legal completion date) the supply is not of residential property. The guidance goes beyond the law but if one can ensure the property is not marketed until after the effective date so much the better. If it has been so marketed it is felt HMRC will accept that the statement goes beyond the law and will not seek to say the property is residential property.

SERGEANT AND SIMS ON STAMP DUTIES

Sergeant and Sims on Stamp Duties at AA39D provides thus:

However, where a building (eg, an office) is not suitable for use as a dwelling but is marketed for sale as a residential development with consent for change of use, that does not make the building a dwelling. The legislation only looks to the future use of a property where that property is already 'in the process' of being constructed or adapted. But note that this view is apparently inconsistent with HMRC guidance.

This extract is useful as it refers to the guidance going wider than the law and the law will prevail.

CONCLUSION

Purchasers must check to see if they are buying residential property or not and in borderline cases must seek to get themselves within the "non-residential or mixed" category.

Buying off-plan with an intended residential change of use will not cause problems but note different definitions apply if a company within the ATED is doing the purchase.

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