



HM Revenue
& Customs

Stamp Duty Land Tax: Mixed-Property Purchases and Multiple Dwellings Relief

Consultation

Publication date: 30 November 2021

Closing date for comments: 22 February 2022

Summary

Subject of this consultation

This consultation seeks views on ways to ensure there are fairer tax outcomes and to prevent abuse of the Stamp Duty Land Tax (SDLT) legislation, specifically ‘mixed-property’ transactions and ‘Multiple Dwellings Relief’ (MDR).

Scope of this consultation

HM Revenue and Customs (HMRC) is consulting on –

- changes to the way in which tax is calculated when purchasers acquire property that is mixed-property (meaning it comprises both residential and non-residential property).
- options to reform the SDLT treatment of property purchases that include more than one dwelling (Multiple Dwelling Relief rules),

Who should read this

Taxpayers; tax practitioners and conveyancers; those involved in the construction, marketing and sale of property; property rental businesses, including buy-to-let landlords; Non-Governmental Organisations with an interest in tax.

Duration

12 weeks from 30 November 2021 to 22 February 2022.

How to respond or enquire about this consultation

Any responses or queries about this consultation should be sent by email to:
stamptaxes.budgetfinancebill@hmrc.gov.uk

Or by post to:

HM Revenue and Customs
Room 3/63
100 Parliament Street
LONDON
SW1A 2BQ

HMRC also welcomes discussions with interested parties. If you would like to meet with policy officials, please contact HMRC using the details above.

After the consultation

A summary of responses to the consultation will be published, after which the government will then carry out a formal consultation on any proposed changes to legislation.

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1. Introduction

1.1 Stamp Duty Land Tax (SDLT) is an important source of government revenue, raising over £8.6 billion in 2020-21. It is also an important factor for people buying a place to live and for business when investing in property as an asset or a place from which to trade.

1.2 As with all taxes, the government keeps SDLT policy under review, including to ensure that those who pay the tax have confidence that the SDLT system is not open to abuse.

1.3 HMRC has identified two areas of SDLT where the current rules are leading to potentially unfair outcomes, incorrect claims, or abuse of the rules. These two areas are -

- the taxation of 'mixed-property' transactions – purchases which consist of both residential and non-residential property. These transactions are sometimes called 'mixed-use', and
- relief for purchases of two or more dwellings – known as 'Multiple Dwellings Relief'.

1.4 The rules for mixed-property transactions are being used by some purchasers to unfairly reduce the SDLT payable, despite the purchase not containing any meaningful non-residential aspects. In light of this, and the increased attempts to abuse the provisions of the relief, the government is consulting on potential changes to the rules to ensure fairer outcomes for those buying residential property and to reduce the scope for incorrect claims and abuse of the rules.

1.5 HMRC has also seen an increase in incorrect or abusive claims for Multiple Dwellings Relief (MDR). While HMRC has a strong record of successfully challenging incorrect MDR claims at Tribunal, to improve administrative efficiency and customer experience this consultation sets out a number of options to reduce or eliminate the scope for incorrect claims and abuse of the rules.

1.6 This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

2. Background

General scheme of SDLT

- 2.1 Stamp Duty Land Tax (SDLT) is charged on the purchase of land and buildings situated in England and Northern Ireland. Responsibility for property transaction taxes equivalent to SDLT in Scotland and Wales are devolved to their national administrations with effect from 1 April 2015 and 1 April 2018 respectively. SDLT therefore does not apply in Scotland and Wales.
- 2.2 SDLT is a marginal rate tax, with each rate applied to the portion of the purchase price that falls within each rate band. For purchases of residential property, the amount of tax payable depends on whether the purchase is subject to any reliefs and if any SDLT surcharges apply.
- 2.3 For leasehold properties, SDLT is chargeable on both the premium paid and the net present value of the rents when the lease is newly granted.
- 2.4 Aspects of the SDLT regime which may interact with either or both mixed-property transactions and Multiple Dwellings Relief (MDR) include the following.

Linked transactions

- 2.5 Special rules apply to treat certain transactions as 'linked' to ensure that purchasers cannot reduce the rate of tax by artificially splitting what is, in substance, a single transaction.
- 2.6 Linked transactions are transactions which 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.
- 2.7 The effect of these rules is to aggregate the linked transactions for the purposes of determining the amount of tax which applies to the transactions as a whole.

Purchases of six or more dwellings

- 2.8 Purchases of six or more dwellings in a single transaction are taxed as purchases of non-residential property. This is known as the 'six or more rule'.

The Higher Rates for Additional Dwellings (HRAD)

- 2.9 Higher rates of SDLT apply to purchases of additional residential properties by individuals (such as second homes or buy to lets) and to purchases of residential properties by companies. The rate is 3% above the standard residential rates of SDLT.
- 2.10 HRAD only applies to the purchase of a freehold or a leasehold premium; it does not apply to rental payments.

2.11 Where an individual purchases a new main residence before selling their old main residence, they must pay HRAD on the purchase of that new main residence. However, provided that they sell the old main residence within three years of the purchase of the new house, they can claim a refund of HRAD.

2.12 Where an individual purchases a property that has a separate dwelling within the same building or grounds, such as a self-contained annex, it does not count as an additional dwelling for the purposes of HRAD if its value is less than a third of the property as a whole.

Non-UK resident SDLT surcharge (NRSDLT)

2.13 A 2% surcharge applies to purchases of residential property if the purchaser is non-UK resident. A special test is used to determine if a purchaser is non-UK resident for SDLT.

The 15% 'anti-enveloping' rate of SDLT

2.14 A 15% flat rate of SDLT is charged on certain non-natural persons (typically companies) purchasing dwellings for more than £500,000. A dwelling which is intended to be used for a specified business purpose (for example, a property rental business or property development trade) is relieved from the 15% rate charge. Where that is the case the HRAD rate applies instead. The relief is withdrawn if, within a period of three years from the date of purchase, that intention is not carried through. In that case a further return must be submitted and the additional tax paid.

3. Mixed-Property Purchases

Introduction

- 3.1 Mixed-property purchases are ones which involve both residential and non-residential property.
- 3.2 They vary greatly in the relative amounts of residential and non-residential property present and the uses to which the non-residential property element is put. Mixed-property purchases range from a country house with some land let for grazing, to fast food shops with flats above, pubs and B&Bs, through to large scale city centre developments comprising ground floor retail outlets with floors of flats above.
- 3.3 At the time SDLT was introduced, the tax charges on residential and non-residential property were closely aligned and so taxing mixed-property at the non-residential rates did not create a significant tax advantage. Over time, as the rates and bands have evolved, incentives have been created to present what is in reality residential property as non-residential to take advantage of lower tax rates. These incentives are even stronger where the 3% HRAD surcharge would apply if the purchase were treated as residential.

How mixed-property works

- 3.4 Purchases of mixed-property are currently wholly charged to the non-residential rates of SDLT, which are lower than the residential rates.
- 3.5 This treatment applies even where only a small proportion of the property is non-residential in nature. There is no lower limit on the amount of non-residential property in a purchase to take advantage of this treatment. In addition, there are currently no rules requiring that the residential and non-residential property be closely located to each other.
- 3.6 The following tables show the standard residential and non-residential rates –

Standard residential rates

Amount payable	SDLT rate
Up to £125,000	Zero
The next £125,000 (the portion from £125,001 to £250,000)	2%
The next £675,000 (the portion from £250,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
The remaining amount (the portion above £1.5 million)	12%

Non-residential rates (chargeable on mixed-property purchases)

Amount payable	SDLT rate
Up to £150,000	Zero
The next £100,000 (the portion from £150,001 to £250,000)	2%
The remaining amount (the portion above £250,000)	5%

Interaction between mixed property and other aspects of SDLT

- 3.7 HRAD only applies to residential property purchases. As mixed-property purchases are classed as non-residential, it means that HRAD does not apply even if the purchaser already owns another dwelling. The following table shows the residential rates payable when a purchase is subject to HRAD –

HRAD residential rates

Amount payable	SDLT rate
Up to £125,000	3%
The next £125,000 (the portion from £125,001 to £250,000)	5%
The next £675,000 (the portion from £250,001 to £925,000)	8%
The next £575,000 (the portion from £925,001 to £1.5 million)	13%
The remaining amount (the portion above £1.5 million)	15%

- 3.8 Mixed-property purchases can also benefit from Multiple Dwellings Relief (MDR). Where MDR is claimed for a mixed-property purchase, the relief is applied to the consideration for the purchase that relates to the dwellings. For example, if a property consisted of a shop with two flats above it, MDR could be claimed but without HRAD being payable. If the flats were purchased without the shop, MDR could still be claimed but HRAD would have been chargeable.

Unfairness arising from mixed-property rules, questionable claims and abuse

- 3.9 Mixed-property purchases are subject to SDLT at the lower non-residential rates even where the amount of non-residential land in the purchase is very small. This means that a purchaser pays the non-residential rates where a purchase consists almost entirely of residential land. The significant difference between the tax rates and surcharges for residential and non-residential property incentivise some purchasers to structure purchases so that they do not have to pay the residential rates of SDLT, including where the property they are buying is their own home. Instead, they seek to make the purchase one of mixed-property so that it is wholly subject to non-residential rates and benefits from paying less SDLT. They may seek to do this by making use of the limitations identified in paragraph 3.5, for example by including token amounts of non-residential property. This leads to unfair outcomes for the majority of customers who pay residential rates of SDLT on their residential purchases.

- 3.10 HMRC has also seen an increase in the numbers of residential property purchasers being approached by so-called 'SDLT reclaim agents', after a property has been bought and tax paid at the residential rates of SDLT. These agents submit questionable claims in return for a significant proportion of any tax refund that is secured. Such questionable claims use the slightest suggestion of non-residential use to seek to render the whole property liable to the lower non-residential rates of SDLT, even though the true nature of the property is wholly residential.
- 3.11 An industry of 'reclaim agents' has grown up simply to take advantage of these rules despite extensive HMRC guidance having been published and Tribunal support for HMRC's interpretation of the rules. Examples of unreasonable interpretations seen by HMRC include:
- A purchaser claimed that if they leased their garage, which was part of a semi-detached property in an ordinary residential suburb, to a company for storage then the purchase of the house, garden and garage would be a mixed-property purchase and subject to the lower non-residential SDLT rates.
 - A purchaser claimed that a right of access to a communal garden accessible only by fellow residents at the centre of a high value residential square in London meant that the purchase of their home was a mixed-property purchase and therefore attracted only the lower non-residential SDLT rates.
 - A purchaser claimed that a paddock behind the back garden of a substantial residential property in an affluent location was non-residential on the basis that it was grazed by a neighbour's horse on an informal basis. The purchaser claimed that this meant the whole property attracted only the lower non-residential rates of SDLT when in fact the residential rates were applicable.
 - A purchaser claimed that a right of way across the grounds of a country house was non-residential land and therefore the purchase of the property should be entitled to the lower non-residential rates. The path was part of the grounds of the home, and nothing separated it from the rest of the grounds.
 - A purchaser claimed that the use of a room above a detached garage as an office in a large, detached, 6-bedroom home in a rural area, as a reason why it was not the purchase of a dwelling. They claimed the fact that the room was used for the purchaser's job during the day meant that the whole dwelling was subject to the lower non-residential SDLT rates.
 - A purchaser claimed that a large property in a rural area which included a small area of woodland was not a residential purchase. The purchaser claimed the woodland was not part of the garden or grounds, so the transaction was one of mixed property and the lower non-residential rates applied.
- 3.12 HMRC is aware that some conveyancers who submitted the original, and correct, SDLT return on behalf of their client have been faced with unjustified negligence claims for failing to advise their client to assess their purchase as mixed-property.
- 3.13 While HMRC has been very successful in challenging questionable mixed property claims at Tribunal, having clearer rules will improve administrative efficiency and customer experience.

- 3.14 This consultation suggests potential changes to the approach to mixed-property in order to ensure fairer outcomes between those buying residential property and to reduce or eliminate the scope for incorrect claims and abuse of the rules.

An apportionment basis for mixed-property

- 3.15 This consultation is seeking views on introducing a new apportionment method of calculating tax in mixed-property cases. Apportionment would mean that the residential portion of a mixed-property purchase would be taxed as residential property and the remaining, non-residential portion of a purchase would be taxed as non-residential property.

- 3.16 Annex A sets out how apportionment could work in practice together with some examples.

Q1 – What do you see as the advantages and disadvantages of apportionment?

Interactions

- 3.17 If apportionment were introduced, the government expects that the HRAD and NRSDLT surcharges would apply to the residential element of purchases.

- 3.18 Purchases that include six or more dwellings would continue to pay tax at the non-residential property rates on the whole of the purchase.

- 3.19 Where MDR is claimed under the current rules, tax for the dwellings is calculated by taking the average paid for a dwelling and then multiplying the tax due on that amount by the number of dwellings.

Q2 – What are your views on how the mixed-property rules interact with the other aspects of SDLT ?

Q3 – What issues would arise in particular for mixed-property purchases that included an MDR claim if apportionment was introduced?

Likely impact of apportionment

- 3.20 If apportionment were to be introduced, it would make the SDLT paid on mixed-property purchases more equitable as the amount payable would reflect the underlying economic nature and use of the land being purchased to a much greater extent. It would ensure that people buying residential property would pay SDLT at the residential rates. It would also address attempts to include token amounts of non-residential property in residential purchases and remove opportunities for purchasers and SDLT reclaim agents to make questionable or abusive claims that a residential purchase is of mixed-property.

- 3.21 The government is aware that for some types of businesses, mixed-property purchases are required and it would welcome views from respondents as to the impact such a change could have on these situations.

Q4 – What impact would apportionment have on both individual and business purchasers of mixed-property?

Q5 – What impact would apportionment have on business transactions?

Q6 – What impact would apportionment have on others involved in the purchase, such as tax practitioners, conveyancers and valuers?

Q7 – What would the impacts be on purchasers of having to value both the residential and non-residential elements of a purchase?

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.

Q9 – Do you agree that apportionment would discourage abuse and give more equitable outcomes in calculating SDLT?

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?

Other options

3.22 An alternative approach to apportionment is that the government could introduce a threshold whereby a purchase is only treated as mixed-property if the non-residential element is more than a certain proportion of the consideration, for example more than half. The threshold chosen under this option would need to be high enough to ensure that what amounted to residential transactions were taxed at the residential rates, and to also prevent attempts to unfairly reduce the SDLT payable on residential property by adding small or token amounts of non-residential land to residential purchases in order to tax the entire purchase as non-residential.

3.23 Such an approach would mean that substantially mixed transactions would still benefit from the existing treatment, and would reduce the impact of any change in the rules for sectors where mixed-property purchases are required. However, it might not eliminate the misuse of the mixed-property rules as it would still incentivise purchasers and SDLT reclaim agents to claim that more than the required proportion of the purchase was non-residential, particularly around the threshold.

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?

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?

Questions concerning mixed-property more generally

3.24 The government is keen to understand how commercial arrangements currently benefit from the SDLT treatment of mixed-property.

3.25 The government is aware that there are some types of business, for example pubs, corner shops, bed and breakfasts, that typically involve purchases of mixed-property and it is keen to hear about

the impact any change to the mixed-property rules would have on those businesses and whether an option for a threshold is needed in such circumstances.

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.

4. Multiple Dwellings Relief (MDR)

Introduction

- 4.1 SDLT is a transaction tax. Ordinarily, SDLT is payable on the total value of a transaction with the result that the purchase of multiple dwellings in a single transaction, or linked transactions, can give rise to higher liability to SDLT than if the same properties were purchased in separate transactions from different vendors.
- 4.2 MDR provides relief for those purchasing multiple dwellings in a single transaction, or as part of a series of linked transactions. It ensures that the SDLT payable aligns broadly with what would have been payable had the properties been purchased individually from different vendors in separate transactions.

How MDR Works

- 4.3 Where at least two dwellings are purchased in a single transaction, or as part of a series of linked transactions between the same vendor and purchaser, the purchaser can choose to have the rate of SDLT determined by the average value of the dwellings purchased, rather than their combined value. Purchasers can therefore benefit from multiple nil-rate and lower percentage bandings, significantly reducing the amount of SDLT payable. MDR doesn't apply automatically; it must be claimed in a land transaction return. The SDLT calculated using this method is subject to a minimum rate of 1 percent.
- 4.4 To calculate the amount of SDLT due with MDR, the purchaser must –
- divide the total amount paid for the properties by the number of dwellings purchased;
 - work out the tax due on this figure;
 - multiply this amount of tax by the number of dwellings.
- 4.5 Examples 1 to 3 below provide detail of the MDR calculation.
- 4.6 There are rules under which MDR is withdrawn if the number of dwellings purchased is later reduced, say through amalgamation or demolition: for example, where two adjacent cottages are purchased and are later knocked into one home. Where such a change in circumstances occurs, the tax must be recalculated as if that had that been the position from the outset. A further return must be submitted and the additional SDLT paid.

Definition of a 'dwelling'

- 4.7 The availability of MDR relies upon there being the purchase of more than one dwelling. Most of the incorrect claims to MDR that HMRC is seeing involve purchasers wrongly claiming that an area of a single dwelling comprises an additional separate dwelling in its own right.

4.8 The SDLT legislation defines a dwelling as follows –

A building, or part of a building, counts as a dwelling if

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

4.9 There is no statutory definition of “suitable for use as a single dwelling”. In the vast majority of cases it should be obvious whether a particular building, or part of a building, constitutes a dwelling. However, in some cases this is not always clear-cut.

4.10 A variety of factors are taken by HMRC as indicators that a building, or part of a building, is suitable for use as a single dwelling. For example -

- it has the physical amenities necessary for independent living (sleeping, eating, cooking, washing and sanitary needs, a place to sit and relax);
- the occupants are afforded privacy and security (for example: private access, a lockable front door);
- the building has its own postal address and gas and electricity supplies and is registered as a separate dwelling for council tax purposes.

4.11 HMRC’s guidance at [SDLTM00372](#) and at [SDLTM00410 to SDLTM00430](#) explains in detail the factors which must be taken into account in deciding whether or not a building is used, or is suitable for use, as a dwelling.

Interaction between MDR and other aspects of SDLT

MDR, the higher rates of SDLT on the purchase of additional dwellings (HRAD) and the 2% non-UK resident surcharge (NRSDLT)

4.12 Dwellings which are subject to HRAD are still eligible for MDR. Where this is the case, the rate of tax on the average consideration takes into account the higher rates.

4.13 Similarly, the purchase of multiple dwellings which are subject to NRSDLT will also be eligible to MDR, but the rate of SDLT will include the 2% surcharge.

The six or more rule

4.14 Where six or more dwellings are purchased in a single transaction, a purchaser has a choice whether to apply the six or more rule to the transaction and so be charged to the non-residential rates of SDLT or claim MDR. The purchaser can choose the option which gives the most advantageous tax outcome.

The 15% ‘anti-enveloping’ rate of SDLT

4.15 MDR is not available on dwellings which are subject to the 15% anti-enveloping rate of SDLT.

Examples of the calculation of MDR (based on SDLT rates from 1 October 2021)

Example 1

This example sets out a claim for MDR on the purchase of two properties in a single transaction.

- Ms Z, a buy-to-let landlord, purchases two houses from a property developer in a single transaction for £1,000,000.
- The transaction is subject to the 3% higher rates on additional dwellings surcharge because Ms Z already owns other residential properties. As more than one dwelling has been purchased, MDR can be claimed.
- The £1,000,000 is divided by two (the number of dwellings purchased), giving an average price per dwelling of £500,000.
- The SDLT payable on £500,000, including HRAD, is £30,000.
- This figure is multiplied by two, giving a total amount of SDLT payable by Ms Z of **£60,000**.
- Without MDR, the SDLT for the transaction, including the 3% surcharge, would have been **£73,750**
- MDR reduces the SDLT payable by **£13,750**.

Example 2

This example shows a claim for MDR where more properties are involved in the purchase.

- Company Y buys four flats in a block for £1,200,000 in a single transaction.
- The transaction is subject to the 3% higher rates as it is a purchase of dwellings by a company. No individual flat is worth more than £500,000 and the 15% rate of SDLT does not apply.
- The £1,200,000 is divided by four (the number of dwellings purchased), giving an average price per dwelling of £300,000.
- The SDLT payable on £300,000, including HRAD, is £14,000.
- This figure is multiplied by four, giving a total amount of SDLT payable by Company Y of **£56,000**.
- If the flats had been purchased separately, they would also (for the purposes of this example) each have been worth £300,000.
- Without MDR, the SDLT for the transaction, including the 3% surcharge, would have been £99,750.
- MDR reduces the SDLT payable by **£43,750**.

Example 3

This example shows a claim for MDR where a dwelling has a separate annex

- Mr Q buys a house for £950,000 which has an annex within the building, comprising a living room, kitchen, bedroom, bathroom and its own separate access.
- The house is to be used as Mr Q's main residence. The annex is worth £250,000.

- As Mr Q owns no other dwellings and the annex is less than a third of the value of the main house, the transaction is not subject to the 3% higher rates.
- The £950,000 is divided by two (the number of dwellings purchased), giving an average price per dwelling of £475,000.
- The SDLT payable on £475,000 is £13,750.
- This figure is multiplied by two, giving a total amount of SDLT payable by Mr Q of **£27,500.**
- Without MDR, the SDLT for the transaction would have been £38,750.
- MDR reduces the SDLT payable by **£11,250.**

5. Tackling incorrect claims to MDR

The problem

- 5.1 MDR was introduced to reduce the rate of SDLT payable on the purchase of multiple residential properties so that it is closer to that charged when purchasing those properties separately. This was to help strengthen demand for, and reduce barriers to investment in residential property, promoting the supply of private rented housing.
- 5.2 The current rules apply to both non-business and business purchases. This means that MDR is available where, for example, a private individual purchases a house which has a separate annex or outbuilding which itself constitutes a separate dwelling. The significant tax saving available through MDR has led to the emergence of an industry of 'SDLT reclaim agents' who typically contact purchasers after they have submitted their SDLT return, suggesting incorrectly that part of the property purchased is a separate dwelling. In a typical scenario:
- The property was marketed by the vendor as a single dwelling.
 - An SDLT return was delivered on behalf of the purchaser by their conveyancer showing the purchase of a single dwelling and calculating the SDLT accordingly.
 - Later, following an approach by an SDLT reclaim agent, an amended return is submitted claiming MDR and seeking a repayment of SDLT on the basis that the purchase was of two dwellings.
- 5.3 Examples of unreasonable claims that HMRC has seen include the following:
- A purchaser submitted a return following the purchase of a large house, but later claimed that an indoor entertainment area, swimming pool and toilet at the end of the garden were a separate dwelling.
 - A purchaser bought a typical suburban house and the conveyancer correctly submitted the SDLT return on the basis that it was a single dwelling. Later the purchaser claimed that the integral garage which had a toilet and basin was itself capable of being used as a dwelling and so the purchase qualified for MDR.
 - A purchaser claimed that an en-suite bedroom in a 7-bedroom detached house was suitable for use as a separate dwelling as it had a built-in wardrobe with an electric socket and could house a microwave and a kettle and so function as a kitchen.
 - A purchaser bought a two-bedroom barn conversion and later claimed that a utility room with a toilet was suitable for use as a separate dwelling. They amended their return to claim MDR on the basis that the barn conversion was two separate dwellings.

- A purchaser bought a 5-bedroomed semi-detached house with a garage. They claimed that the garage, which had electricity points and was constructed only from breezeblock, was itself suitable for use as a separate dwelling.

5.4 As with mixed-property, HMRC is aware that some conveyancers who submitted the original, and correct, SDLT return of behalf their client have faced unjustified negligence claims for failing to advise their client on the supposed availability of MDR.

5.5 Analysis by HMRC of a sample of amended returns with MDR claims showed that up to 40% of those claims may not qualify for the relief. HMRC has a strong record of successfully challenging incorrect MDR claims at Tribunal. However, to improve administrative efficiency and customer experience, this consultation sets out a number of legislative options to reduce or eliminate the scope for incorrect claims and abuse of the rules.

Properties purchased to include at-home care for vulnerable individuals

5.6 The government recognises that for some families with vulnerable members, such as elderly relatives, their needs are best met through the provision of separate self-contained residential accommodation on the same site as the family home. For example, an elderly relative who lives in an annex to the property. The government does not wish to discourage such arrangements due to the benefits of intergenerational living, and since they help augment the national housing stock, and welcomes responses to the questions below that reference any implications for these households. Equally, it is not acceptable for MDR to be abused where there is no genuine annex for family use.

Options

5.7 The government is interested in your views in the following options.

Option 1 - Allow MDR only where all the dwellings are purchased for a ‘qualifying business use’

5.8 The incorrect claims received by HMRC are almost entirely by private individuals purchasing their homes. Under this option, MDR would be available only where the purchaser intends to use all the dwellings for a ‘qualifying business use’.

5.9 A property acquired for a ‘qualifying business use’ would be one that is acquired for –

- development or redevelopment and resale;
- exploitation as a source of rents.

5.10 Consistent with other SDLT reliefs, under this option the government would make MDR conditional on the purchaser satisfying the ‘qualifying business use’ requirement either throughout a three-year post-transaction period, or until the property is sold if earlier. Where that requirement is not satisfied, all MDR would be withdrawn. The purchaser would be required to recalculate the tax, submit a further return and pay the additional tax within 30 days.

5.11 HMRC’s ability to check continued entitlement to relief throughout the three-year post-transaction period is enhanced by the recent changes to the Schedule 36 taxpayer information notice powers,

introduced in Finance Act 2021 (paragraphs 8 and 9 of [Schedule 34](#)). HMRC's guidance on this change is set out in the Compliance Handbook at [CH23530](#) and [CH23540](#)

Likely impact of Option 1

- 5.12 This option would remove the ability to claim MDR for private individuals who are buying residential property, such as their home, but maintain the relief for those who acquire property for a qualifying business use.
- 5.13 This option would also remove relief where a purchaser buys multiple properties and doesn't use all of them for a qualifying business use. For example, if a block of four flats is purchased and all but one are for a qualifying business use, relief would be denied on the whole purchase.
- 5.14 The intention test and the need for claimants to monitor the use of each of the dwellings over a three-year post-transaction period, and to deliver a further return if necessary, would add to the administrative burden on claimants. However, given that there is already a requirement to check the continuing availability of MDR throughout a three-year post-transaction period, any additional burden should be minimal.

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?

Q18 - What impacts would Option 1 have on businesses?

Option 2 - Allow MDR only in respect of the dwellings purchased for a 'qualifying business use'

- 5.15 The rules and conditions for this option would be largely the same as for Option 1, but with the difference that MDR would be available only for those dwellings acquired for a 'qualifying business use' and not for dwellings not acquired for such a use.
- 5.16 For example, four flats are purchased, three of which are intended to be used for a 'qualifying business use' with the fourth to be occupied by the purchaser. MDR would not be available for the flat to be occupied by the purchaser and its value would be deducted from the total consideration to arrive at the amount in respect of which MDR can be claimed.

Likely Impact of Option 2

- 5.17 As with Option 1 this would require the introduction of an intention test with the same administrative consequences, but with the addition of the need to identify the values to be attributed to the different properties, adding to the administrative burdens and compliance risks associated with the calculation of SDLT to be paid.
- 5.18 There would be a similar withdrawal rule as set out at Option 1 in relation to the properties for which there was an initial intention to use the dwelling(s) for a 'qualifying business use'.
- 5.19 The need for claimants to monitor the use of each of the dwellings over a three-year post-transaction period, and to deliver a further return if necessary, would add to the administrative burden on claimants. However, the government expects this additional burden to be minimal

given that there is already a requirement to check the continuing availability of MDR for the three years after the transaction.

5.20 Applying the current MDR rules and the same apportionment method used for mixed-property purchases (as set out at Chapter 3) the calculation of the tax under this option would be as follows:

Example 4

Mrs U purchases four houses for £4,000,000. The purchase is subject to the 3% HRAD surcharge.

The SDLT for the entire purchase without MDR is **£513,750**

Only three of the four houses qualify for MDR under Option 2. The consideration attributable to the three qualifying houses is £2,100,000. The consideration attributable to the non-qualifying house is £1,900,000

The calculation of the SDLT payable under Option 2 is as follows -

- £2,100,000 divided by three is £700,000
- The SDLT on each of the three qualifying houses is £46,000 each (the SDLT on a £700,000 property)
- Total SDLT on the three qualifying houses is **£138,000** (i.e. £46,000 multiplied by three)
- The SDLT on the non-qualifying house is calculated by –
 - o identifying its value as a percentage of the total paid, which in this case is 47.5% (£1,900,000 being 47.5% of £4,000,000), and
 - o taking 47.5% of the £513,750 figure of SDLT without MDR, which is £244,031.
 - o This calculation gives the non-qualifying property proportionate fractions of the rate bands, reflecting its value as a proportion of the total consideration.
- Total SDLT to be paid is £138,000 plus £244,031 giving total SDLT payable by Mrs U of **£382,031**
- Therefore, MDR is worth (£513,750 minus £382,031) **£131,719**

Had MDR been available on all four properties the tax would have been calculated as:

- £4,000,000 divided by four, giving £1,000,000. SDLT on £1,000,000 is £73,750. Multiplying that by four gives the total SDLT payable of **£295,000 (a difference of £87,031)**

Example 5

Company V purchases four houses for £4,000,000. The SDLT without MDR is **£513,750**

Only three of the four houses qualify for MDR under Option 2 because the non-qualifying dwelling is to be occupied by the brother of the director of Company V and will not be rented out on full commercial terms. The purchase is subject to the 3% higher rates on additional dwellings.

The consideration attributable to the three qualifying houses is £3,600,000.

The consideration attributable to the non-qualifying house is £400,000. The 15% rate of SDLT does not apply as the dwelling is valued at less than £500,000.

The calculation of the SDLT payable under Option 2 is as follows –

- £3,600,000 divided by three is £1,200,000
- The SDLT on each of the three qualifying properties is £99,750 (the SDLT on a £1.2m property)
- Total SDLT on the three qualifying properties is £299,250 (i.e. £99,750 multiplied by three)
- The SDLT on the non-qualifying house is calculated by -
 - o Identifying its value as a percentage of the total paid, which in this case is 10% (£400,000 being 10% of £4,000,000), and
 - o Taking 10% of the £513,750 figure of SDLT without MDR, which is **£51,375**.
- Total SDLT to be paid is £299,250 plus £51,375 giving total SDLT payable by Company V of **£350,625**. Therefore, MDR is worth (£513,750 minus £350,625) **£163,125**

Had MDR been available on all four properties the tax would have been calculated as:

- £4,000,000 divided by four, giving £1,000,000. SDLT £1,000,000 is £73,750. Multiplying this by 4 gives SDLT of **£295,000 (a difference of £55,625)**

Q19 - Do you foresee any issues with the proposed method of calculating the relief?

Q20 - Are there any other types of property-related businesses purchasing residential property (and which support the aims of MDR) which should qualify for relief under Options 1 or 2?

Q21 - What would be the impact of Options 1 and 2 on the structuring of commercial transactions involving the purchase of dwellings?

Option 3 - Restrict MDR by introducing a 'subsidiary dwelling' rule

5.21 This option would align the MDR rules with the 'subsidiary dwelling' rule which applies to HRAD.

5.22 There is an existing rule within the HRAD legislation (at paragraph 5(5) of Schedule 4ZA FA2003) which applies to individuals whereby if there is a subsidiary dwelling (such as an annex) within the same building or grounds as another dwelling, it is counted as a separate dwelling for the purposes of HRAD only if its value is a third or more of the price attributable to the property as a whole. This rule means that HRAD is not payable on a subsidiary dwelling (such as an annex which is to be occupied by another family member) which is valued at less than a third of the total price of the property. The government has no plans to change this.

- 5.23 Under this option, a similar test would apply to both non-business and business purchasers so that part of a building, or a building within the grounds of another dwelling, would not count as a separate dwelling for the purposes of MDR unless its value is a third or more of the total price attributable to the property as a whole. The MDR calculation would continue to operate as now.
- 5.24 Whilst the current definition of a dwelling includes part of a building that is suitable for use as a single dwelling, the addition of 'a one third of the value' test is expected to be sufficiently high to stop most of the incorrect claims of MDR. It would be difficult to argue, for example, that a bedroom with an en-suite is valued at a third or more of the property as a whole. However, a smaller risk could remain in that claimants could exaggerate the value of the subsidiary dwelling to gain a tax advantage.
- 5.25 This approach would also resolve an inconsistency between the HRAD and MDR rules which currently allow an individual purchaser to escape the HRAD charge, while benefitting from MDR.

Example 6A (based on SDLT rates from 1 October 2021. The purchaser is buying a Freehold interest and is a UK resident individual).

Mr B buys a property for £1,500,000. It is the only property Mr B owns at the point of purchase.

The SDLT is **£93,750**

Example 6B

In this example, the purchase is of a property which contains an annex.

Mr B buys a property for £1,500,000 which includes a subsidiary dwelling (e.g. an annex) the value of which is £300,000.

As the annex is worth less than a third of the total purchase price, there is no HRAD to pay. Under the proposed revised rules, a claim to MDR would not be available because the annex would not count as a dwelling for the purposes of MDR.

The SDLT is **£93,750**.

Note - Had Mr B been eligible to MDR (as now), the calculation would have been: -

- £1,500,000 divided by two gives £750,000.
- The primary dwelling is a replacement main residence, meaning no HRAD would be due.
- The SDLT on £750,000 is £27,500
- The second dwelling is a subsidiary dwelling and so not subject to HRAD. SDLT on £750,000 is = £27,500
- Total SDLT £55,000
- The saving against £93,750 is £38,750

Example 6C

Following on from example 6B above, this example also includes an annex but its value is greater.

Mr B buys a property for £1,500,000 which has a separate dwelling (an outbuilding) the value of which is £515,000. The separate dwelling is not excluded from HRAD by the subsidiary dwelling rule so the transaction is a higher rates transaction subject to HRAD. A claim to MDR

can be made because the value of the subsidiary dwelling is a third or more of the purchase price. The calculation is -

- £1,500,000 divided by two (the number of dwellings) is £750,000
- SDLT on £750,000 at the HRAD rates is £50,000 multiplied by two (the number of dwellings).
- Total SDLT £100,000
- The SDLT without a claim to MDR is £138,750. MDR gives a saving of £38,750.

Likely Impact of Option 3

5.26 MDR would continue to be available to individuals (i.e. non-business claimants). There is not expected to be any additional administrative burden on individuals as the subsidiary dwelling rule in HRAD already applies requiring them to make a valuation. However, for businesses claiming MDR, in cases where it is not clear-cut whether the value of a subsidiary dwelling is worth a third or more of the total price paid for the property as a whole, they may need to seek a professional valuation.

Q22 - does Option 3 introduce any other impacts on businesses?

Option 4 - Allow MDR only for purchases of three or more dwellings.

5.27 MDR is currently available where two or more dwellings are purchased in a single transaction, or as part of a series of linked transactions. Under this option, MDR would be available only where three or more dwellings are purchased. This would be a simple legislative change which would likely reduce the number of incorrect claims being submitted to HMRC which typically rely on individuals claiming that a single dwelling is two dwellings.

5.28 While this option is the most straightforward change, purchasers may instead contend that what is, in reality, a single dwelling is three dwellings, or that the purchase of two dwellings is the purchase of three dwellings. Therefore, this option would not eliminate the misuse of MDR that the government is seeking to tackle.

Likely Impact of Option 4

5.29 This option would remove the relief from property developers and property rental businesses buying two dwellings, putting them at a disadvantage to those buying three or more.

5.30 There are not considered to be any additional administrative burdens associated with this option.

Questions about all the MDR Options

Q23 - What do you see as the advantages and disadvantages of each of the options set out above?

Q24 - Are there any other solutions to the problem described above not covered by the options in this consultation and which would, in your view, tackle the problem more effectively and efficiently?

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?

Questions concerning MDR more generally

5.31 The government is keen to understand how commercial arrangements currently benefit from MDR.

Q26 - How does MDR feature in commercial decision making?

Q27 - To what extent does the availability of MDR impact purchasing decisions where the six or more rule applies?

Q28 - To what extent does MDR currently impact on the supply of housing for both rental and purchase?

6. Assessment of impacts

Summary of impacts for mixed-property

Exchequer Impact Assessment

Year		2022 - 23	2023 - 24	2024 - 25	2025 -26	2026 -27
Exchequer impact (£m)						

The Exchequer impact will be estimated following consultation, final scope and design of the policy and will be subject to scrutiny by the Office for Budget Responsibility.

Impacts	Comment
Economic impact	The economic impacts will be identified following consultation and final design of the measure.
Impact on individuals, households and families	<p>Any change would have an impact on individuals purchasing mixed-property in England and Northern Ireland.</p> <p>Customer experience could be negatively impacted if the treatment of mixed-property is changed as set out in this consultation as any change would result in some additional administrative burden in calculating the tax payable. HMRC would publish guidance to support customers setting out how any changes may affect them.</p> <p>Any change to the rules is not expected to affect family formation, stability or breakdown.</p>
Equalities impacts	It is expected that the measure would impact on those purchasing property in England and Northern Ireland. The additional tax payable as a result of any changes to the mixed-property rules would fall to those who are buying residential property, which is expected to be in line with the existing distribution of property ownership. This measure is not expected to impact on this distribution for any particular group.
Impact on businesses and Civil Society Organisations	Any change is expected to have a negligible impact on businesses acquiring property and would impact those businesses which provide specialist tax advice to purchasers. One-off costs would include familiarisation with any changes, and could include upskilling, training

	<p>staff and updating software to reflect any changes to the SDLT payable. There are not be expected to be any continuing costs.</p> <p>Customer experience could be negatively impacted as any changes could increase complexity for businesses. To support businesses, HMRC would publish guidance setting out how any changes may affect them.</p> <p>This measure is not be expected to impact civil society organisations.</p> <p>This measure is not expected to increase business customer costs significantly.</p>
Impact on HMRC or other public sector delivery organisations	Any additional delivery funding requirements will be assessed following the outcome of the consultation.
Other impacts	Other impacts have been considered and none have been identified

Summary of impacts for MDR

Exchequer Impact Assessment

Year	2021 - 22	2022 - 23	2023 - 24	2024 - 25	2025 -26	2026 -27
Exchequer impact (£m)						

The Exchequer impact will be estimated following consultation, final scope and design of the policy and will be subject to scrutiny by the Office for Budget Responsibility.

Impacts	Comment
Economic impact	The economic impacts will be identified following consultation and final design of the measure.
Impact on individuals, households and families	<p>Any change would have an impact on individuals purchasing multiple dwellings in England and Northern Ireland.</p> <p>Customer experience could be negatively impacted as any change to the MDR rules might result in some additional administrative burden in calculating the tax due on purchases of residential property. Any impact</p>

	<p>is not expected to be significant. HMRC would publish guidance to support customers setting out how any changes may affect them.</p> <p>Any change to the rules is not expected to affect family formation, stability or breakdown.</p>
Equalities impacts	<p>Any future legislative changes would impact on those purchasing property in England and Northern Ireland. The additional tax payable as a result of any changes to the MDR rules would fall to those who are buying more than one residential property, which is expected to be in line with the existing distribution of property ownership. This measure is not expected to impact on this distribution for any particular group.</p>
Impact on businesses and Civil Society Organisations	<p>Any change is expected to have a negligible impact on businesses acquiring property and would impact those businesses which provide specialist tax advice to purchasers. One-off costs would include familiarisation with any changes, and could include upskilling, training staff and updating software to reflect any changes to the SDLT payable. There are not be expected to be any continuing costs.</p> <p>Customer experience could be negatively impacted as any change to the MDR rules might result in some additional administrative burden in calculating the tax due on purchases of residential property. Any impact is not expected to be significant. To support businesses, HMRC would publish guidance setting out how any changes may affect them.</p> <p>This measure is not expected to impact civil society organisations.</p> <p>This measure is not expected to increase business customer costs significantly.</p>
Impact on HMRC or other public sector delivery organisations	<p>Any additional delivery funding requirements will be assessed following the outcome of the consultation.</p>
Other impacts	<p>Other impacts have been considered and none have been identified.</p>

7. Summary of consultation questions

Questions about mixed-property apportionment

Q1 – What do you see as the advantages and disadvantages of apportionment?

Q2 – What are your views on how the mixed-property rules interact with the other aspects of SDLT ?

Q3 – What issues would arise in particular for mixed-property purchases that included an MDR claim if apportionment was introduced?

Q4 – What impact would apportionment have on both individual and business purchasers of mixed-property?

Q5 – What impact would apportionment have on business transactions?

Q6 – What impact would apportionment have on others involved in the purchase, such as tax practitioners, conveyancers and valuers?

Q7 – What would the impacts be on purchasers of having to value both the residential and non-residential elements of a purchase?

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.

Q9 – Do you agree that apportionment would discourage abuse and give more equitable outcomes in calculating SDLT?

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?

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?

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.

Questions about Multiple Dwellings Relief

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?

Q18 - What impacts would Option 1 have on businesses?

Q19 - Do you foresee any issues with the proposed method of calculating the relief?

Q20 - Are there any other types of property-related businesses purchasing residential property (and which support the aims of MDR) which should qualify for relief under Options 1 or 2?

Q21 - What would be the impact of Options 1 and 2 on the structuring of commercial transactions involving the purchase of dwellings?

Q22 - does Option 3 introduce any other impacts on businesses?

Questions about all the MDR Options

Q23 - What do you see as the advantages and disadvantages of each of the options set out above?

Q24 - Are there any other solutions to the problem described above not covered by the options in this consultation and which would, in your view, tackle the problem more effectively and efficiently?

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?

Questions concerning MDR more generally

Q26 – How does MDR feature in commercial decision making?

Q27 To what extent does the availability of MDR impact purchasing decisions where the six or more rule applies?

Q28 - To what extent does MDR currently impact on the supply of housing for both rental and purchase?

8. The consultation process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this consultation is included at chapter 7.

Responses should be received by 22 February 2022, by e-mail to stamptaxes.budgetfinancebill@hmrc.gov.uk or by post to:

Stamp Taxes Policy Team
HM Revenue and Customs
Room 3/63
100 Parliament Street
LONDON
SW1A 2BQ

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can

also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

HMRC is committed to protecting the privacy and security of your personal information. This privacy notice describes how we collect and use personal information about you in accordance with data protection law, including the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act (DPA) 2018.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the UK General Data Protection Regulation.

Your data

We will process the following personal data:

Name

Email address

Postal address

Phone number

Job title

Purpose

The purpose(s) for which we are processing your personal data is: Stamp Duty Land Tax: Multiple Dwellings Relief and Mixed-Property Purchases

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your rights

You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

You have the right to request that any inaccuracies in your personal data are rectified without delay.

You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC

100 Parliament Street

Westminster

London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer

HM Revenue and Customs

14 Westfield Avenue

Stratford, London E20 1HZ

advice.dpa@hmrc.gov.uk

Consultation principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: [Consultation Principles Guidance](#)

If you have any comments or complaints about the consultation process, please contact the Consultation Coordinator using the following link:

[Submit a comment or complaint about HMRC consultations](#)

Please do not send responses to the consultation to this link.

9. Annex A: How apportionment could work

- 9.1 One option to make the tax paid on mixed-property purchases more equitable and to reduce opportunities for abuse of the rules would be to require purchasers to apportion the tax for a property, meaning residential rates of SDLT would be paid on residential land, and non-residential rates of SDLT would be paid on non-residential land.
- 9.2 This would be done firstly by working out the proportions of the whole consideration relating to residential and non-residential property elements. Tax would then be calculated on the assumption that the whole consideration was for residential property, and again separately on the assumption that the whole consideration was for non-residential property. The two tax figures produced would then be reduced by the proportions of the whole consideration relating to residential and non-residential property elements. Finally, the reduced tax figures would be added together to get the final tax bill. The examples below show how this would work in practice.
- 9.3 Apportionment of the consideration would be done on a just and reasonable basis as it is currently for other aspects of the SDLT code, for example in the existing approach to MDR.
- 9.4 In standard cases, that is cases where MDR is not claimed, the apportionment could work as follows:

Standard calculation (based on SDLT rates from 1 October 2021)

- Step 1 – work out the percentage proportions of the whole consideration attributable to residential property and to non-residential property.
- Step 2 – calculate the tax on the assumption that the whole consideration is for residential property
- Step 3 – calculate the tax on the assumption that the whole consideration is for non-residential property
- Step 4 – reduce the amounts of tax produced in Steps 2 and 3 according to the percentage proportions of the consideration that is residential and non-residential property established in Step 1
- Step 5 – add the amounts produced by Step 4 together to get the total tax payable

Example

This example illustrates a case where a purchaser buys a home with grounds.

Mr and Mrs C purchase a nine-bedroom house surrounded by ten acres of park land, five acres of which was commercially leased to a third party to graze cattle. The purchasers are not liable to the HRAD.

The cost of the overall property is £3,500,000 of which £70,000 (2%) is attributable to the value of the grazing land.

Under the existing rules and depending on the facts, the entire purchase may be subject to the non-residential rates of SDLT and therefore may attract a liability of £164,500. (Without the lease for the grazing, the purchase of the same house and grounds for £3,500,000 would have attracted SDLT of £333,750.)

Under standard apportionment, Mr and Mrs C would calculate tax on their purchase as follows:

- Step 1 – work out the percentages of residential property and non-residential property proportions of the consideration - 98% plus 2%.
- Step 2 – calculate the tax on the assumption that the whole consideration is for residential property - £333,750.
- Step 3 – calculate the tax on the assumption that the whole consideration is for non-residential property - £164,500.
- Step 4 – reduce the amounts of tax produced in Steps 2 and 3 according to the percentage proportions of the consideration that is residential and non-residential property established in Step 1 - £327,075 and £3,290. (i.e. 98% and 2% respectively)
- Step 5 – add the amounts produced by Step 4 together to get the total tax payable - £330,365

This would produce additional tax of £165,865. The SDLT payable better reflects the split in the nature of the underlying land and produces a fairer result when compared to someone purchasing a home with gardens and grounds of the same value but without the grazing arrangement.

Mixed-property and MDR

9.5 In cases where MDR is claimed, purchasers would follow a slightly different process. Tax for the dwellings would need to be calculated separately, and the government expects that this would be the case even if changes were made to MDR as a result of this consultation.

9.6 As a first step, the tax for the dwellings would be calculated using the residential property rates applied to the consideration for the dwellings. Then the tax would be calculated for the consideration that does not relate to dwellings, known as the 'remaining consideration'. The 'remaining consideration' includes the consideration relating to:

- non-residential land or property, and
- any residential land or property that does not consist of a dwelling.

The calculation would be as follows:

MDR calculation

- Step 1 – work out the percentage proportions of the whole consideration attributable to residential property and to non-residential property.
- Step 2 – calculate the tax for dwellings using the MDR rules
- Step 3 – calculate the tax on the assumption that the whole consideration is for the property relating to the 'remaining consideration'
- Step 4 – reduce the amount of tax produced in Step 3 according to the percentage proportion of the whole consideration relating to the 'remaining consideration' established in Step 1

- Step 5 – add the amounts produced by Step 2 and Step 4 together to get the total tax payable

Example

This example illustrates a mixed-property purchase that includes a claim for MDR.

Ms K purchases a high street property for £2,000,000, consisting of a three-storey terraced building with takeaway food premises on the ground floor and two flats on the floors above. The flats are valued at £600,000 each.

Ms K is liable to HRAD because she intends to retain her current residence.

Under the current rules she may opt into MDR or pay tax at the non-residential property rates on the whole £2,000,000. Paying tax at the non-residential property rates would attract a liability of £89,500. The liability would be £75,800 if MDR is claimed. In practice, Ms K would opt into MDR.

Under apportionment, Ms K would calculate tax on her purchase as follows:

- Step 1 – work out the percentage proportions of the whole consideration attributable to dwellings and the remaining consideration - 60% and 40%.
- Step 2 – calculate the tax for dwellings using the MDR rules - £76,000 (2 dwellings multiplied by £38,000 (£600,000 consideration for each dwelling subject to HRAD)).
- Step 3 – calculate the tax on the assumption that the whole consideration of £2,000,000 is for the property relating to the 'remaining consideration' - £89,500.
- Step 4 – reduce the amount of tax produced in Step 3 according to the percentage proportion of the whole consideration relating to the 'remaining consideration' established in Step 1 - £35,800 (£89,500 tax multiplied by 40%).
- Step 5 – add the amounts produced by Step 2 and Step 4 together to get the total tax payable - £111,800 (£76,000 + £35,800).

This would produce an increase in tax payable of £36,000 compared to a current liability of £75,800. Under the existing SDLT rules, Ms K's purchase would not be liable to HRAD. Under an apportionment Ms K's purchase would become liable.