SDLT
Multiple dwellings relief
Application to student accommodation
1. Introduction and Summary

1.1 This note summarises the relief from stamp duty land tax (SDLT) which applies to sales of multiple residential properties, and explains the circumstances in which this relief is available to purchasers of student accommodation properties.

1.2 The relief was introduced in 2011, with the intention of reducing barriers to investment in residential property. Where the relevant conditions are met, the relief operates to reduce the rate of SDLT payable on acquisitions of multiple residential properties, rather than to remove the SDLT charge altogether.

1.3 Transfers of student accommodation properties can benefit from the relief, although eligibility will depend on, among other things, the design of the flats and whether the property is subject to a long lease when it is sold.

2. The Relief

2.1 The relief operates by using the average value of the units/flats within the property, rather than the gross purchase price, to determine the SDLT rate applicable on a sale. For example, an investor purchases a block of ten flats for £2m. The average value of the flats, £200,000, determines the SDLT rate applicable to the purchase price. Therefore SDLT is payable at 1%, the rate applicable to residential transactions with a value between £125,000 and £250,000, rather than the 4% rate for transactions with a value over £500,000. The SDLT charge is £20,000 (1% of £2m), rather than £80,000 (4% of £2m).

2.2 The minimum SDLT rate payable under the relief is 1%, so if the relief is claimed on a sale where the average value of the flats is less than £125,000 (the 1% threshold for residential property), tax at 1% of the aggregate consideration would still be payable.

2.3 The relief applies to sales of multiple “dwellings”. For these purposes, a dwelling is a building that is “used or suitable for use as a single dwelling”. Importantly, the rules provide that buildings used for residential accommodation for students are dwellings for these purposes, unless they are halls of residence. In their published guidance HM Revenue & Customs set out various indicators to be used when determining whether student properties are halls of residence. A critical factor is whether the property in question has shared dining and kitchen areas. Where it does, the property will be a hall of residence and the relief will not apply. By contrast, where a property is divided into self-contained units/flats, each with their own kitchen facilities, the property is likely to comprise dwellings capable of falling within the relief. Planning permission is also relevant: HMRC state that if permission for use as a residential institution (C2) has been given, this indicates the building is a hall of residence. This suggests that residential use for student accommodation (C3 or “sui generis”) will be treated as “dwellings” capable of benefiting from the relief. Generally, the relief should apply to modern
“cluster” flats and studios, namely flats with self-contained living accommodation, but not to the more traditional “halls” style properties with communal living areas.

2.4 The relief will also apply to the sale of buildings with multiple residential units that are in the process of construction, so the relief is available when a site is sold during the course of development. Similarly the relief is available where a property is sold “off-plan” and building works have not commenced at the time of the sale. In these circumstances the relief will only apply if the transaction is for the sale of dwellings “to be constructed...under the contract”, namely where the seller is responsible for carrying out the development and completion of the sale occurs when (and if) construction is completed. The relief will not apply where a developer acquires a site before building works have commenced, with the intention of building flats. This is because in these circumstances the subject matter of the transaction is the land rather than dwellings, and the seller is not required to build the flats under the contract.

2.5 As with certain other SDLT reliefs, there are anti-avoidance rules under which multiple dwellings relief can be withdrawn or restricted within a certain period after it has been claimed on a sale. Under these rules, the relief is withdrawn if within three years after the sale an event occurs which, if it had occurred immediately before the sale, would have affected the purchaser’s eligibility for relief. The main situation in which this rule is likely to apply is where the number of residential units reduces after the sale. For example, where the relief is claimed on a part-developed building or “off-plan” purchase, the purchaser must establish the average value of the flats by reference to the number of flats that are to be built, and use this figure to calculate the SDLT payable. If the number of flats actually built is lower than the number anticipated at the time of the sale, so that the average price per flat increases, under these rules the purchaser must revisit their SDLT calculation and pay any additional tax due as a result. Similarly, if within three years of a sale the purchaser carries out refurbishment or conversion works to the property, reducing the number of residential flats, the purchaser must revisit their SDLT calculation and pay any additional tax due.

Example

A purchaser contracts with a developer to buy a block of 10 flats for £3m, with the purchase price paid upfront. Payment of the purchase price triggers the purchaser’s liability to account for SDLT, and the purchaser claims multiple dwellings relief. The average value of the flats is £300,000 and therefore the purchaser pays £90,000 SDLT, namely 3% of £3m (the rate applicable for transactions with a value of £300,000). Prior to completion of the development, the purchaser agrees with the developer to change the plans for the block, with the result that the completed block only comprises five (enlarged) flats. The purchaser must revisit their SDLT calculation on the basis of the reduced number of flats. The price per flat is now £600,000, and SDLT is payable on the £3m purchase price at 4%, the rate applicable to transactions with a value over £500,000. The SDLT charge is now £120,000 and the purchaser must pay the additional £30,000 (plus interest).
2.6 There is no facility for obtaining a refund for overpaid SDLT where the number of flats increases after completion. It is also worth noting that the three year period is reduced where the purchaser sells the property to an unconnected third party within this period, so a purchaser who has claimed the relief does not need to continue to monitor the number of flats after they have sold the property.

2.7 Another important restriction to the relief is that it is not available for the sale of properties that are subject to a lease, or leases, with a term of more than 21 years. Although it is understood that this provision was included to prevent the relief applying to the sale of ground rent portfolios, it has the effect of reducing the number of student accommodation sales that can benefit from the relief, as these properties are often sold subject to leases of more than 21 years. These leases are typically put in place where a developer retains a property after completion, granting the lease to a connected party which then lets the flats to students. This structuring enables the developer of the property to recover the VAT incurred on site acquisition and development, under the VAT “zero-rating rules”. In order to preserve this VAT recovery, the lease must have a term of more than 21 years, and in many cases the lease must remain in place for the ten year period following practical completion. A sale within this period can be achieved without prejudicing the VAT position if the lease is assigned to an entity in the purchaser’s group at the time of the sale. However, in these circumstances, the property will be sold subject to the lease, disqualifying the sale from multiple dwellings relief. In practice this can mean that on the sale of a property within the ten year period, the parties must weigh up the benefit of the SDLT saving, which can only be achieved if the lease is surrendered prior to sale, against the VAT charge that would be triggered by this surrender.

2.8 Importantly, the SDLT relief will not be available where a property is sold subject to a long lease, regardless of whether the remaining term at the time of sale is less than 21 years. The critical factor is that the lease had a term of more than 21 years when granted, and this disqualifies a sale from benefiting from relief.

2.9 Under the anti-avoidance rules mentioned above, if the relief has been claimed by a purchaser and a lease of more than 21 years is put in place by the purchaser within three years of the sale, the relief would be withdrawn. So a developer who acquires a student property midway through the development will not be able to benefit from the SDLT relief if they are intending to grant a lease of more than 21 years for VAT purposes within this three year period.

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**Example**

A purchaser acquires a block of 150 student flats for £50m. The purchaser claims multiple dwellings relief and pays SDLT of £1.5m, namely 3% of £50m, reflecting the rate applicable to transactions of £333k, the average value of the flats. A year after the sale the purchaser carries out works converting half of the block to offices. As the conversion take place within three years of acquisition, the purchaser must adjust their SDLT calculation so that they pay SDLT on the part of the purchase price attributable to the office space at the full 4% rate applicable to commercial transactions.
3. Interaction with other SDLT rules and reliefs

3.1 Multiple dwellings relief is not available for transactions which qualify for SDLT group relief (available for transfers between corporate group members), or charities relief (available for the acquisition of properties by charities). Both group relief and charities relief are more generous than multiple dwellings relief, in that a purchaser benefiting from them pays no SDLT, rather than SDLT at a reduced rate. Given this it is unlikely that a purchaser able to benefit from both multiple dwellings relief and either group or charities relief, would opt for multiple dwellings relief. However the rules prohibit a purchaser from electing which relief to claim, so that group and charities relief “trump” multiple dwellings relief. The effect of this is that, where a purchaser has claimed group or charities relief and this relief is subsequently withdrawn (under anti-avoidance rules similar to those mentioned above), the purchaser cannot benefit from multiple dwellings relief to reduce the resulting SDLT charge.

3.2 Multiple dwellings relief can be claimed on transactions which include commercial land as well as residential, for example on the sale of a block of student accommodation flats with shops or offices on the ground floor. In these cases, the purchase price attributable on a “just and reasonable” basis to the residential element is subject to the reduced rate provided by the relief, while the normal rules apply to determine the rate payable in relation to the commercial space.

3.3 Different SDLT rates apply to commercial and residential transactions, with higher 5% and 7% rates for residential transactions with a value of more than £1m and £2m respectively. Where a sale comprises six or more dwellings, the transaction is treated as commercial rather than residential, and the normal commercial rates (maximum 4%) apply. This rule is disregarded where multiple dwellings relief is claimed (without this disregard, arguably the relief could not be claimed on residential transactions involving more than six units/flats). However, where a purchaser acquires a property with six or more flats and the average value of the flats is more than £1m, it will be in the purchaser’s interests not to claim multiple dwellings relief. By not claiming the relief the purchaser will benefit from the rule treating the sale as commercial rather than residential, and he will pay SDLT at the top rate applicable to commercial transactions (4%), rather than the 5% or 7% rates applicable to residential transactions over £1m. The “super” SDLT rate of 15%, which applies to the purchase of dwellings worth more than £500,000 by certain corporate and partnership vehicles, does not apply to the acquisition of student accommodation properties.

*With the Committee’s thanks this paper was produced by Kirsten Prichard Jones, Partner, Nabarro*