

Finance Bill 2011 clause 83/Schedule 22

Stamp Duty Land Tax: relief for transfers involving multiple dwellings

DRAFT GUIDANCE

Overview

This is a relief for transactions which include the acquisition of interests in more than one dwelling. The relief must be claimed in a Land Transaction Return.

The relief was announced at Budget 2011 and applies to transactions where the effective date is on or after the date of Royal Assent to the Finance Bill. The Finance Bill introduces new FA03/S58D and FA03/SCH6B.

Where the relief is claimed, the rate of Stamp Duty Land Tax (SDLT) which applies to the consideration attributable to interests in dwellings is determined by reference to the amount of this consideration, divided by the number of dwellings, ie the mean consideration attributable to the dwellings. This is subject to a minimum rate of 1%.

The rate of SDLT which applies to the consideration attributable to interests in land other than dwellings, if any, is the rate which would apply in the absence of the relief.

Superior freehold or leasehold interests in dwellings subject to leases granted for an initial period of 21 years or more are not eligible for relief unless those leases are also transferred.

The relief includes provision for 'off-plan' purchases where construction or adaptation of the property for residential use may not have commenced by the effective date of the transaction. It also provides for the tax calculation to be adjusted if the number of dwellings involved is reduced within three years of the effective date of the transaction.

The relief

1. The relief is available for transactions the effective date of which is on or after [the date of Royal Assent to the Finance Bill 2011] and which is not linked with any transaction with an effective date before that date except:
 - an option binding the grantor to enter into the later transaction or
 - a right of pre-emption restricting the right of the grantor to enter into the later transaction.
2. The relief must be claimed in a Land Transaction Return or an amendment to a return, using relief code 33.

Relevant transactions FA03/SCH6B/PARA2

3. The relief may be claimed in respect of a transaction which is a “relevant transaction”. A relevant transaction is either of the following:
 - a transaction, the main subject-matter of which includes interests in more than one dwelling
 - a transaction which is one of a number of linked transactions, the main subject-matter of which includes interests in at least one dwelling and where one or more transactions linked to it includes interests in at least one other dwelling.
4. In either case, the main subject-matter of the transaction may include interests in land other than dwellings.

Exclusions

5. A transaction cannot be a relevant transaction if relief under FA03/S74 (Exercise of collective rights by tenants of flats) or FA03/S75 (Crofting community right to buy) applies to it.
6. A transaction cannot be a relevant transaction if relief under FA03/SCH7 (Group relief, reconstruction relief and acquisition relief) or FA03/SCH8 (Charities relief) is available for it, would be available on the making of a claim or has been withdrawn from it.

Superior interests

7. For the purpose of determining whether a transaction is a relevant transaction, a superior interest (freehold or headlease) over property which includes dwellings is treated as if it were an interest in those dwellings.

If for example, a purchaser acquires the freehold of a new block of four flats which are untenanted. The transaction is a relevant transaction.

8. However, such a superior interest cannot be taken into account for this purpose to the extent that it is a superior interest in relation to a lease over a dwelling which was granted for an initial term of 21 years or more.

Example: a purchaser acquires the freehold of a block of four flats. The transaction is not linked with any other transaction.

- Where two of the four flats are tenanted under long leases, the transaction is a relevant transaction, the main subject-matter of which includes two dwellings, i.e. the two flats not tenanted under long leases.
- If three of the four flats are tenanted under long leases, the transaction is not a relevant transaction, because only one flat can be taken into account, ie that which is not tenanted.

The tax calculation - FA03/SCH22/PARA4

9. The chargeable consideration for a relevant transaction is apportioned between:
- the consideration attributable to interests in dwellings and
 - the remaining consideration, if any.

The consideration must be so apportioned on a 'just and reasonable' basis.

10. The percentage rates of tax which apply, firstly to the consideration attributable to interests in dwellings and secondly to the remaining consideration, are then calculated separately.

Consideration attributable to interests in dwellings - FA03/SCH22/PARA5(1)-(6)

11. The relevant consideration for the purposes of FA03/S55 is the aggregate consideration:

- for this transaction and any transactions linked to it (whether relevant transactions or not),
- which is attributable to dwellings, interests in which are included in this and any *relevant* transactions linked to it,

divided by the number of such dwellings.

12. The rate of tax that applies is set by Table A of FA03/S55, except that the minimum rate is 1% - FA03/SCH22/PARA5(2).

13. FA03/S116(7) (six or more dwellings treated as non-residential property) does not apply.

The remaining consideration - FA03/SCH22/PARA5(7)

14. The relevant consideration for the purposes of FA03/S55 is the aggregate consideration for the transaction and all transactions which are linked to it (whether relevant transactions or not). In most cases Table B of FA03/S55 will apply, but Table A may apply in some circumstances where the transaction or transactions consist wholly of property comprising five or fewer dwellings.
15. The rate of tax that applies is the rate that would apply by virtue of FA03/S55 in the absence of the relief.

Tax due on consideration in the form of rent - FA03/SCH22/PARA4(5)

16. Where the chargeable consideration for a relevant transaction includes rent, the normal provisions of FA03/SCH5 apply to determine the amount of tax chargeable on the rent.

Meaning of 'dwelling' - FA03/SCH22/PARA7

17. For the purposes of the relief a 'dwelling' means a building or part of a building which is suitable for use as a single dwelling or is in the process of being constructed or adapted for such use.
18. Land that is, or is to be, occupied or enjoyed with the dwelling such as a garden or grounds (including any building or structure on such land) and land that subsists, or is to subsist, for the benefit of the dwelling, is taken to be part of the dwelling.
19. Land within paragraph 17 above includes land which is needed for the reasonable enjoyment of the dwelling, having regard to the size and nature of the dwelling. HMRC will apply a similar test to that applied for the capital gains tax relief for main residences - TCGA92/S222(3).
20. FA03/S116(2)-(5) apply to determine whether certain types of property are or are not dwellings.

'Off plan' transactions

21. Where:

- there is a contract to purchase a building, or part of a building, which is to be constructed or adapted under the contract for use as a dwelling or dwellings,
- the contract is substantially performed before construction of the building, or part of the building, concerned has commenced and
- the effective date of the transaction is deemed to be the date of substantial performance by virtue of FA03/S44/44A/45/45A or FA03/SCH17A/PARA12A or 19(3)

then, for the purposes of the relief, the main subject-matter of the transaction will be taken to consist of or include an interest in a dwelling.

22. For this purpose a contract includes any agreement including, in Scotland, missives of let not constituting a lease.

Further return where number of dwellings is reduced - FA03/SCH22/PARA6

23. Where:

- relief is claimed under FA03/SCH6B for a relevant transaction,
- during a period following the effective date of the transaction(s) an event occurs and
- if that event had occurred, immediately before the effective date, either the transaction would not have been a relevant transaction or the rate of tax charged on dwellings would have been higher

then the event is deemed to have taken place immediately prior to the effective date of the transaction.

24. For this purpose, “event” includes any change of circumstance or change of plan.

25. This provision may be triggered where

- the subject-matter of the transaction ceases to include dwellings (so that the transaction ceases to be a relevant transaction), or
- where the number of dwellings included in the subject-matter of the transaction is reduced *and* the rate of tax charged on the consideration attributable to dwellings would increase as a result.

26. The period concerned is:

- the period ending three years after the effective date of the transaction or, if earlier,
- the date on which the purchaser disposes of the interest in the building to a person who is not connected with him.

27. In the case of a transaction substantially performed before completion, the 3-year period runs from the date of substantial performance.

28. In these circumstances, the purchaser must make a further return and pay any additional tax due within 30 days of the event.

29. Further returns should be made by letter to the Birmingham Stamp Office

30. References in FA03/SCH10 to the effective date of the transaction are to be read as references to the date of the event. The tax chargeable is calculated by reference to the rates in force at the effective date of the transaction.