RELIEF FOR TRANSFERS INVOLVING MULTIPLE DWELLINGS

FA03/S83/SCH6B

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.

Where the relief is claimed, the rate of 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, i.e. the mean consideration attributable to the dwellings. This is subject to a minimum rate of 1 per cent.

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.

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 19 July 2011 and which is not linked with any transaction with an effective date before that date except for either of the following:

    - an option binding the grantor to enter into the later transaction
    - 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 28 - other relief - initially. We expect that a dedicated code will be available from October 2011. We will publicise the new code, and the date from which it is to be used, nearer the time.

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.

Application to partnership transactions

5. An ordinary partnership transaction to which FA03/SCH15/PART2 applies, or a transfer of a chargeable interest to which FA03/SCH15/PARA10/18/23 applies, can be a relevant transaction.

6. A transfer of a partnership interest which is deemed to be a land transaction by FA03/SCH15/PARAS14/17, an acquisition of a partnership interest which is treated by FA03/SCH15/PARA16 as a major interest in land or a withdrawal of money, etc., from a partnership which is deemed to be a land transaction by FA03/SCH15/PARA17A, cannot be a relevant transaction for the purposes of this relief.

Exclusions FA03/SCH6B/PARA2(4)

7. 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.

8. 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 FA03/SCH6B/PARA2(6)

9. 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.

   Example: a purchaser acquires the freehold of a new block of four flats which are untentanted. The transaction is a relevant transaction.

10. 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.

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    - 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, i.e. that which is not tenanted.

The tax calculation FA03/SCH6B/PARA4

11. The chargeable consideration for a relevant transaction is apportioned between the following:

    - the consideration attributable to interests in dwellings
    - the remaining consideration, if any.

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

12. 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.

13. For this purpose the chargeable consideration can include the market value of the subject-matter of the transaction where this is substituted by FA03/S53 or FA03/SCH4/PARA5, or an election is made under FA03/SCH15/PARA12A.

Consideration attributable to interests in dwellings FA03/SCH6B/PARA5(1)-(6)

14. 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.

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

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

The remaining consideration FA03/SCH6B/PARA5(7)

17. 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).

18. 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 (some of which are excluded from relief by FA03/SCH6B/PARA2(6)).

19. 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/SCH6B/PARA4(5)

20. 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/SCH6B/PARA7

21. 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.

22. 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, is taken to be part of the dwelling. This will usually be a question of fact depending on the individual circumstances of each case.

23. Land that subsists, or is to subsist, for the benefit of the dwelling is taken to be part of the dwelling. This applies to an interest in land which is not contiguous with the dwelling and its garden or grounds: for example, a separate lease of a garage in a block.

24. FA03/S116(2)-(5) apply to determine whether certain types of property are or are not dwellings.

'Off plan' transactions FA03/SCH6B/PARA7(5)-(6)

25. 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 where the following applies

- 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)

26. 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/SCH6B/PARA6

27. Further tax may be due where:

- relief is claimed under FA03/SCH6B for a relevant transaction,

- during a period following the effective date of the transaction(s) (the 'relevant period') 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

Tax is chargeable in these circumstances on the transaction as if the event took place immediately prior to the effective date of the transaction.

28. For this purpose, 'event' includes any change of circumstance or change of plan but does not include an onward sale of individual dwellings.

29. This provision may be triggered where either of the following apply:

- the subject-matter of the transaction ceases to include dwellings (so that the transaction ceases to be a relevant transaction)

- the number of dwellings included in the subject-matter of the transaction is reduced - for example by combining smaller dwellings into larger ones.

30. The relevant period is:

- the period ending three years after the effective date of the transaction or, in respect of a dwelling,

- the date on which the purchaser disposes of that dwelling to a person who is not connected with him.

31. In the case of a transaction substantially performed before completion, the relevant period runs from the date of substantial performance.

32. The recalculation of the tax due is based on the whole of the consideration given for the subject-matter of the transaction and the number of dwellings following the event, including any dwellings sold on prior to the event.

33. Where the result of a recalculation following an event is that more tax is due, the purchaser must make a further return and pay the additional tax within 30 days of the event.

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

35. 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.