A stable proposition?

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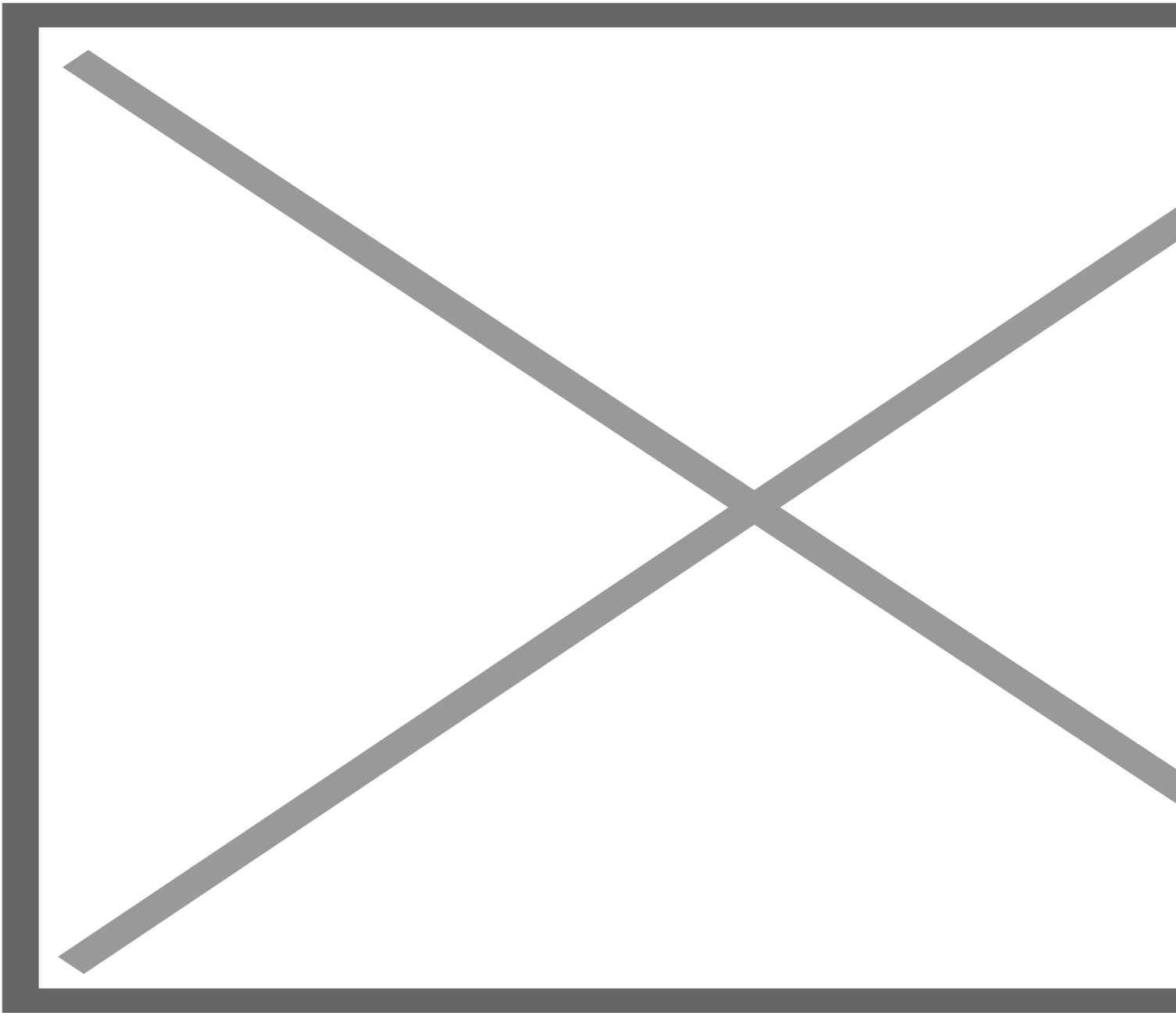

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Rebecca Sheldon considers the differences between residential and mixed use property in light of the Goodfellow judgment

Key Points

What is the issue?

Advertisements encouraging claims for stamp duty land tax (SDLT) refunds based on the difference in rates between properties classified as ‘mixed use’ and ‘residential’ have become increasingly common.

What does it mean to me?

The Goodfellow case highlights the risks in making ‘mixed use’ property refund claims where the facts are arguably weak.

What can I take away?

It would be prudent (subject to a successful appeal to the Upper Tribunal) not to seek to rely on capital gains tax case law when considering the availability of refunds under Finance Act 2003 Sch 10 para 34.

Advertisements encouraging claims for stamp duty land tax (SDLT) refunds based on the difference in rates between properti es classified as ‘mixed use’ and ‘residential’ under the Finance Act 2003 Sch 10 para 34 have become increasingly common.

However, Goodfellow and another v HMRC [2019] UKFTT 750 is an important recent case. Following Hyman v HMRC
[2019] UKFTT 469, it further highlights the risks in making ‘mixed use’ property refund claims where the facts are arguably weak.
Goodfellow: the facts Mr and Mrs Goodfellow appealed against HMRC’s decision on 22 June 2018 to refuse their claim for an SDLT refund of £48,500.

They were the registered proprietors of Heathermore House, which had been described in the estate agent’s particulars as a ‘fantastic family home set in about 4.5 acres’ with six bedrooms, gardens, swimming pool, stable yard and paddocks.

Mr and Mrs Goodfellow completed the purchase of the property on 21 March 2016, having entered the property as ‘residential’ on their SDLT1 return. A year later, their tax agents submitt ed a claim for relief under Finance Act 2003 Sch 10 para 34, seeking relief of £48,500, as it was asserted that the property should instead have been classified as ‘mixed use’.

At the FTT hearing, HMRC submitted that the ‘detached garage, stable yard and paddocks formed part of the grounds of the residential property and were correctly classified as residenti al under section 116 of FA 2003’.

In contrast, Mr and Mrs Goodfellow submitted that the space above the garage was used as an office and that their vendor had done the same (which was non-residential use); the stable yard and paddocks were non-residential as they were used by a third party for grazing horses; and the paddocks were undeveloped and were therefore by definition non-residential.

It was consequently submitted that the property was ‘mixed-use’.

Legal de?nitions

SDLT rates for different types of property are set out at Finance Act 2003 s 55. Table A sets out the higher rates which apply to properties which are wholly residential, whilst Table B sets out the lower rates which apply to

mixed-use properties.

The key provision in this appeal was consequently FA 2003 s 116(1), which defines the meaning of ‘residential property’ for these purposes:

‘In this Part, “residenti al property” means:

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

b. land that is or forms part of the garden or grounds of a building within paragraph (a) (including any building or structure on such land); or

c. an interest in or right over land that subsists for the benefit of a building within paragraph (a) or of land within paragraph (b); and “non-residential” means any property that is not residential property.’

In interpreting this section, Hyman was referred to; in particular, para 6 of the judgment, where Judge McKeever held that:

> ‘Section 116 provides an exhaustive definition. If the property falls within any of paragraphs (a), (b) or (c) of subsection (1), the property is residential property. If the property falls outside those paragraphs, it is not residential property.’

First-tier Tribunal analysis

Judge John Manuell agreed with the submissions of HMRC, finding that the arguments advanced on behalf of the taxpayer were ‘artificial, strained and contrary to common sense’ (para 15).

In coming to this conclusion, Judge Manuell held that although classification of properties for SDLT purposes should not be determined solely by reference to an estate agent’s particulars of sale, the particulars in this case were prepared by ‘reputable agents, and clearly they must have had some bearing on the appellant’s decision to purchase the property’.

Judge Manuell described these particulars as the fullest description available, and emphasised that they were not challenged. ‘They describe an equestrian property. There is no reference to current commercial activity or the prospect of future development in the particulars. There is no suggestion that the property is anything other than a country residence. This was also plainly the view of the appellant’s solicitors.’ (para 16)

The judge went on to find that despite the above (which was not conclusive), looking at the character of the property as a whole:

- The land surrounding the property was essential to its character.
- The detached garage, being connected to the house by a walkway and equipped with its own bathroom, was ‘plainly and obviously’ suitable for domestic use.
- The use of the room as an office is wholly residential in character, as it is in principle no different to working from home and ‘home working is hardly new’.
- The paddocks are an adjunct to the stables, without which keeping horses would be impractical, and there was no evidence that ‘anything approaching a commercial arrangement was made at any material time for the use of the paddocks’.

- The stables and stable yard had no evidence of a livery business or similar in operation at the time of purchase.

It was therefore held at para 24 that: ‘None of the arguments raised by the appellants long after they had agreed the purchase of the property (prior to which point the SDLT payable on the purchase must have been known to them, as the SDLT was payable on completion) has any substance. For SDLT purposes, applying FA 2003 s 116, the tribunal finds that the whole of the property is residential with no non-residential element. It follows that the appeal must be dismissed.’ (para 24, emphasis added)

Comment

Goodfellow is the second recent case where the FTT has found against a taxpayer who had submitted a claim for a refund on the basis that a property they had previously considered to be ‘residential’ was in fact ‘mixed-use’.

Although capital gains tax case law on the concept of ‘grounds’ was referred to both in Goodfellow and Hyman by counsel for the taxpayer, the judges in each case declined to give these cases weight in an SDLT context. It would therefore be prudent (subject to a successful appeal of these cases on this point to the Upper Tribunal) to not seek to rely on capital gains tax case law when considering the availability of refunds under Finance Act 2003 Sch 10 para 34.

It is also notable (and perhaps unsurprising) that the judgment gave short thrift to the idea of homeworking being an indicator that a property is ‘mixed-use’. The sheer prevalence of homeworking in the modern employment era would significantly expand the availability of the lower SDLT rates if taken to alter the character of an otherwise wholly residential property.

From a practical perspective, although it is always worth considering whether the lower ‘mixed-use’ rates can apply when purchasing a property (and submitting a claim for a refund in appropriate circumstances), what both Goodfellow and Hyman before it show is that a holistic approach will be taken by the tribunal, which considers the entire property and its grounds as a whole.

Commercial activity

Whilst third party grazing may in some contexts undoubtedly render a property ‘mixed-use’, the judgment in Goodfellow is useful in that it gives an idea of the fact pattern for when this might be so. In this case, the peppercorn rent of £1 per month for the third party grazing rights did not alter the tribunal’s view that the property remained wholly residential. This indicates that when considering whether a commercial activity carried out on a property renders it ‘mixed-use’, the activities should not only be strictly commercial in nature but also commercial in terms of the spirit of the transaction itself.

It must also be remembered, however, that commercial activity is not the test under s 116, and that commercial activity (or lack thereof) is only one potential factor in ascertaining whether a property has non-residential aspects to it.

Character of a property

Secondly, what is clear from Goodfellow is that although an estate agent’s prospectus is not considered to be definitive, it may be taken into account and given weight by a tribunal in later determining the true character of a property at the time of purchase. Real caution should be taken here, as s 116 refers to the nature of the land and not how it is marketed. The reality of the nature of the land may not correspond at all with the marketing material used in attempts to sell it and the two potentially distinct realities should not be automatically

conflated.

However, this factor should still be taken seriously when questioning the likelihood of success on appeal. This applies especially if the taxpayer does not intend to challenge the way in which the property was originally described in its marketing material, as it may (as happened in this case) be construed as evidencing the true nature of the land at the time of purchase.

In conclusion, particularly where the tax at stake is relatively low, strong consideration (and in suitable cases, legal advice) should therefore be taken prior to undertaking the expense and time of an appeal to the First-tier (Tax) Tribunal – even if an adviser is offering a contingent fee basis.