Residential or non-residential: mixed-use transactions

Property Tax

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The case of *Daniel Ridgway* illustrates the complexity taxpayers can experience when applying the stamp duty land tax rules.

Key Points

What is the issue?

The recent case of *HMRC v Daniel Ridgway* considers the the stamp duty land tax rules in context of mixed-use transactions and multiple dwellings relief.

What does it mean for me?

The case hinged upon two conflicting legal restrictions – a clause in the lease preventing residential use and the planning permissions allowing only residential use.

What can I take away?

The case has highlighted the complexity of the stamp duty legislation and how important it is for taxpayers to understand the key areas of risk when submitting a stamp duty land tax return, particularly where a claim for relief may be relevant.

As the complexity of the stamp duty land tax legislation has grown, so has the number of cases heard at tribunal. We have seen an increase in disagreements between taxpayers and HMRC regarding the application of the stamp duty land tax rules, and a boom in ‘boutique’ stamp duty land tax repayment agents advising on treatments that may not match HMRC’s interpretation. Perhaps these two factors are linked, showing the importance of obtaining balanced advice from reputable advisers.

This article reviews the recent case of *HMRC v Daniel Ridgway* [2024] UKUT 36 (TCC), where the Upper Tribunal overturned a decision of the First-tier Tribunal on the meaning of ‘dwelling’; when s 75A (anti-avoidance) applied; and whether multiple dwellings relief required a claim where s 75A applied.

The key issues

Before we turn to considering the facts of the case, these are the key aspects of the stamp duty land tax regime that were considered.

Mixed-use transactions

Land transactions that include acquisitions of residential and non?residential land or property are considered to be ‘mixed-use’ transactions. For instance, the transaction could relate to a flat connected to a shop, doctor’s surgery or office. Mixed-use transactions benefit from the non?residential rates of stamp duty land tax. As the non-residential rates are generally lower than the residential rates, this can provide an attractive outcome for taxpayers.

Multiple dwellings relief

Multiple dwellings relief is a tax relief introduced in 2011 to reduce barriers to investment in residential property; however, it has been subject to abuse and resulted in a number of cases being heard at tribunal. Perhaps

as a result of this, it was announced in the 2024 Budget that multiple dwellings relief will be abolished, broadly for transactions with an effective date on or after 1 June 2024.

Prior to being repealed, multiple dwellings relief can apply where the main subject matter of any transaction involves at least two dwellings. If the relevant conditions are met, multiple dwellings relief can operate to reduce the rate of stamp duty land tax payable by taking the following steps:

1. Divide the total amount paid for the properties by the number of dwellings.
2. Calculate the stamp duty land tax payable on a residential property transaction for that consideration.
3. Then multiply the result by the number of dwellings in the transaction.

Effectively this provides a wider use of the lower bands of stamp duty land tax.

Anti-avoidance

Finance Act 2003 s 75A was introduced in 2006 to put a stop to the complex tax avoidance schemes that were prevalent at the time. In essence, it applies to counteract arrangements that involve a number of steps being taken to acquire an interest in land, whereby the total stamp duty land tax payable is less than it would have been had a more straightforward notional transaction with the same commercial substance been undertaken.

Importantly, this anti-avoidance provision does not include a tax avoidance 'main purpose' test and therefore the legislation can apply in a wide variety of circumstances.

HMRC v Daniel Ridgway: the facts

In *Daniel Ridgway*, the Upper Tribunal considered a property transaction involving two separate registered titles – a semi-detached house and gardens, and another property called the Old Summer House. The total purchase price was £6.5 million. Both properties had separate entrances. Before the effective date, Mr Ridgway received advice from his solicitor that if the Old Summer House was being used commercially at the date of completion, the whole transaction could be considered a 'mixed-use' transaction and therefore subject to a lower rate of stamp duty land tax.

Just two weeks before completion, and at the request of Mr Ridgway, the vendors granted a commercial lease of the Old Summer House for six months to a photography business. The lease included a clause that the property should not be used for residential purposes; however, no changes were made to the property to make it physically unsuitable for use as a dwelling, nor was any planning consent obtained – an important point for the Upper Tribunal in arriving at its decision.

In light of the advice taken, a stamp duty land tax return was submitted in September 2017 applying the non? residential rates on the basis that the subject matter of the transaction was 'mixed-use', comprising:

- the acquisition of the main home (a dwelling); and
- the Old Summer House (a commercially used property unsuitable for use as a dwelling).

Stamp duty land tax of £314,500 was paid.

HMRC opened an enquiry into the return in May 2018, subsequently determining that the property was not mixed-use and that residential rates of stamp duty land tax applied. A closure notice to this effect was issued to

Mr Ridgway in February 2021, nearly three years later. HMRC concluded that the Old Summer House was residential property because it was suitable for use as a dwelling on the effective date of the transaction and therefore the residential rates of stamp duty land tax should be payable.

This gave rise to a stamp duty land tax liability of £888,780 – more than double the amount self-assessed in the original return.

Mr Ridgway appealed to the First?tier Tribunal (*Daniel Ridgway v HMRC* [2022] UKFTT 00412 (TC)) on the basis that legal restrictions in the lease meant that the Old Summer House was only suitable to be used commercially and therefore it was not residential property. In the alternative, he argued that if the Old Summer House was found to be suitable for residential use, he should be entitled to claim multiple dwellings relief, which HMRC also denied.

The First-tier Tribunal decision

On review of the facts, the First-tier Tribunal found that the non-residential stamp duty land tax rates ultimately did not apply. The tribunal decided that as the terms of the lease stated that the Old Summer House could not be used for residential purposes, it was not suitable for use as a dwelling.

However, the First-tier Tribunal concluded that the anti-avoidance provision at s 75A required the lease to be disregarded when calculating the amount of stamp duty land tax due, on the basis that there were a series of transactions (the grant of the lease followed by the acquisition of the property) the cumulative effect of which was to reduce the overall stamp duty land tax liability.

Although it considered that the property was not suitable for use as a dwelling, the First-tier Tribunal concluded that the transaction should be taxed at the residential rates of stamp duty land tax due to the operation of s 75A.

The tribunal further concluded that multiple dwellings relief should be applied in calculating the stamp duty land tax due on the notional transaction required to be recognised by s 75A, even though Mr Ridgway did not claim multiple dwellings relief because he submitted his stamp duty land tax return on the basis that the property was mixed-use.

This meant that, according to the First-tier Tribunal decision, the stamp duty land tax liability was £577,500.

The Upper Tribunal decision

HMRC appealed the First-tier Tribunal judgment, and the Upper Tribunal found that it was incorrect on a number of points.

Firstly, the Upper Tribunal noted that the test of a dwelling is an objective test. The judges considered the planning permissions granted for the Old Summer House to understand if this would provide further evidence of its suitability for use as a dwelling. It concluded that only residential permissions had been granted and that this fact had been incorrectly considered as irrelevant by the First-tier Tribunal.

The Upper Tribunal said: ‘We recognise that it might not be easy to balance physical attributes against legal restrictions in carrying out the multi-factorial assessment required to determine whether a building is suitable for use as a dwelling. There may also be difficulty in balancing different types of legal restrictions. However … the

existence of a legal restriction would not be determinative, it would simply be one factor in the analysis.'

As there were two conflicting legal restrictions – the clause in the lease preventing residential use and the planning permissions allowing only residential use – the Upper Tribunal found that, in these circumstances, the physical attributes of the property should be given more weight than legal restrictions in determining whether it was suitable for use as a dwelling on the effective date.

On that basis, and in light of the First-tier Tribunal's finding of the fact that, absent of any legal restriction, the Old Summer House would be suitable for use as a dwelling, the Upper Tribunal concluded that the property was entirely residential in nature.

Secondly, the Upper Tribunal decided (in agreement with both Mr Ridgway and HMRC) that the s 75A anti-avoidance provision was not engaged. Essentially, this is because the grant of the lease did not result in the stamp duty land tax otherwise payable when Mr Ridgway acquired the property being lower than it would have been if the relevant notional transaction had been undertaken.

Finally, the Upper Tribunal considered the availability of multiple dwellings relief. In the original stamp duty land tax return submitted by Mr Ridgway, no claim was made for multiple dwellings relief, because his position was that the Old Summer House was not a residential property. The deadline for amending the return and making a claim for multiple dwellings relief was in September 2018, some years before HMRC issued its closure notice.

Whilst the First-tier Tribunal concluded that multiple dwellings relief did, in effect, apply by applying s 75A, the Upper Tribunal rejected this, noting that stamp duty land tax is a self-assessed tax with strict deadlines to make various claims for relief. Although some would argue that this may give rise to 'unfairness' to Mr Ridgway and others in a similar position, a precedent was set by the Court of Appeal in the case of *Candy v HMRC* [2022] EWCA Civ 1447, and the Upper Tribunal was required to follow this decision.

In conclusion

As things stand (noting that the Upper Tribunal decision may be appealed), HMRC has successfully argued that two dwellings were acquired, and the subject matter of the transaction entered into by Mr Ridgway was entirely residential. HMRC has also successfully denied the claim for multiple dwellings relief, as the claim could only be made in a return and the time limit for amending the return passed without a claim being paid (partly because it took so long for HMRC to issue a closure notice). Some may therefore consider that the outcome allows HMRC to have its cake and eat it.

The multiple dwellings part of this case will only be of historical interest from 1 June 2024, in light of the recent Budget announcement. However, the case has highlighted the complexity of the stamp duty legislation and how important it is for taxpayers to understand the key areas of risk when submitting a stamp duty land tax return, particularly where a claim for relief may be relevant. In particular, it emphasises that the rules governing the administration of stamp duty land tax may not allow for consequential claims to be made following an enquiry.

Finally, the decision provides useful insight into the operation of the anti-avoidance rule at s 75A, and the weighting of the various factors that may be relevant to the determination of whether a property is suitable for use as a dwelling.