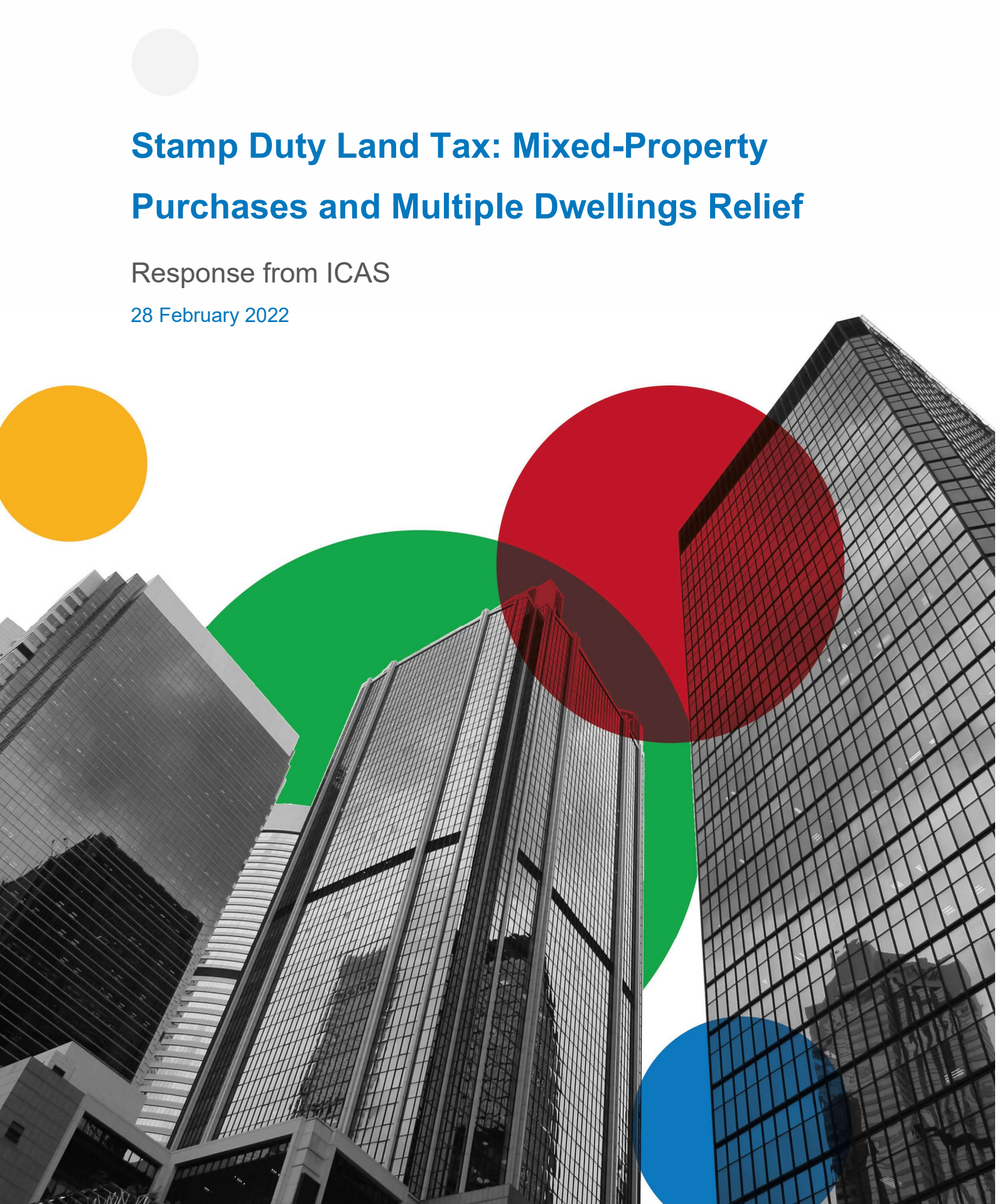




Stamp Duty Land Tax: Mixed-Property Purchases and Multiple Dwellings Relief

Response from ICAS

28 February 2022

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 22,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to contribute to the consultation, 'Stamp Duty Land Tax: Mixed-Property Purchases and Multiple Dwellings Relief', issued by HMRC on 30 November 2021. We also appreciated the opportunity to discuss the consultation at a meeting with HMRC on 10 February.

Specific questions

Questions about mixed-property apportionment

Q1 – What do you see as the advantages and disadvantages of apportionment?

5. The advantage of apportionment is that it should discourage spurious claims for mixed property. The disadvantage is that it would be detrimental for people who are buying a business where the house, considered in isolation, may be of a disproportionate value to the value of the business as a whole.
6. Examples include:
 - Farms: Post Covid rural property has become more valuable and subject to very strong demand. At the same time government policy is to encourage elderly farmers to retire. It seems counter intuitive to price younger farmers out of the market.
 - Racehorse Trainer: The main purpose of buying a trainer's yard is to have good stables and access to gallops. A successful trainer is one who can successfully train horses, keep them healthy but also be each owner's "best friend". The houses in established yards tend in isolation to have a disproportionate value compared to the value of the yard as a whole. There is the potential to end up with the position where the property as a whole would be more valuable if the yard were to be demolished. Furthermore, any goodwill is adherent goodwill.

Q2 – What are your views on how the mixed-property rules interact with the other aspects of SDLT ?

7. We have no comments on this question.

Q3 – What issues would arise in particular for mixed-property purchases that included an MDR claim if apportionment was introduced?

8. We have no comments on this question.

Q4 – What impact would apportionment have on both individual and business purchasers of mixed-property?

9. Apportionment would ensure that most individuals pay SDLT at the appropriate rate. However, genuine businesses will be seriously disadvantaged. Houses could potentially be split from their farmland and business premises causing fragmentation of units and ultimately communities.

Q5 – What impact would apportionment have on business transactions?

10. In respect of farmers, the land and the house will be likely to be sold separately; farmland will only be bought by conglomerates which can afford to buy the land without a farmhouse. This is likely to work against government environmental policy, in particular environmental land management schemes (ELMs).
11. There is a risk that larger farmers may not need to consider the environment to the same extent as others and may not be claiming grant money under ELMs. Economies of scale would enable higher yields but potentially at the expense of soil quality and other environmental issues.
12. For other businesses the impact of paying SDLT on a residential property which is occupied for the purposes of a business would be an added overhead, running counter to a policy of encouraging business investment.
13. Landlords might be encouraged to buy business premises and let them to the intending trader, as they would have to pay higher rates for additional dwellings (HRAD) but not the 15% rate. This could be viewed as counter to a policy of creating a sound rural economy.
14. Agricultural planning ties on residential property will become most desirable as a means of suppressing the value of rural property for the purposes of calculating SDLT.

Q6 – What impact would apportionment have on others involved in the purchase, such as tax practitioners, conveyancers and valuers?

15. As noted in paragraph 1.3 of the consultation, there have been difficulties with the current rules. It would be helpful if some simplification of the system could be achieved, without compromising the ability of commercial traders to buy property.

Q7 – What would the impacts be on purchasers of having to value both the residential and non residential elements of a purchase?

16. It is likely that agents' fees will increase as they will be required to value the split between residential and non-residential elements on behalf of the purchaser.
17. Costs and valuation difficulties could also increase due to tension between the vendor's interests (increased value of the house for CGT PPR) and the purchaser's interests (reduction in the value of the house for SDLT). To some extent this issue already exists, where mixed property is being acquired with borrowing (no interest deduction for the house) and the purchaser wishes to reduce the value of the private elements.

Q8 – At what stage in a purchase could a purchaser expect to determine the relative values of the residential and non-residential elements of the property? For example, research, survey, consultation with a selling agent, or exchange.

18. The stage at which SDLT will be considered is likely to depend on cash flow. The more equal the relative parts, the earlier it will be considered.

Q9 – Do you agree that apportionment would discourage abuse and give more equitable outcomes in calculating SDLT?

19. For non business purchasers, generally yes, but as set out above, it could cause difficulties for business purchasers.

Q10 – Looking at the information in Annex A, do you have an alternative method of calculation for apportionment that would be effective in discouraging incorrect claims that the purchase of residential property is actually of mixed-property?

20. An alternative method would be a straightforward split by value, without the additional steps suggested in Annex A.

Q11 – What would be the impact of allowing mixed-property treatment only for transactions that reach a particular threshold of non-residential property? What should such a threshold be and why?

21. See our response to Question 1. There are situations where the overwhelming purpose of the purchase is to acquire a business, but the residential element has a disproportionate value. For example, a sheep farm in Cumbria or Shropshire would attract a massive premium for the house at present, which is disproportionate to the value as a working farm.

Q12 – What do you see as the advantages and disadvantages of allowing mixed-property treatment only where a minimum proportion of the consideration is in respect of non-residential land?

22. The advantage of using a minimum non residential proportion would be that it would provide an objective criterion. However, as set out in our responses to Questions 1 and 11, there would be issues in areas where the residential element has a disproportionately high value.

23. There would also be problems for someone purchasing a derelict/semi-derelict farm where the land and buildings need considerable investment; the residential house would potentially be worth disproportionately more than the land and buildings.

24. Valuers might be encouraged to overvalue amenity land, if the value of amenity land were to determine the value of the residential element. Amenity land generally has considerable marriage value and without it the house would command a lower price. An increase in lotting, would also be likely, such that the house will be sold without the land, and the land will be lotted separately at a higher value. Anti-avoidance legislation could address this but would add complexity.

Q13 – Do you have alternative proposals to the ones set out in this consultation which would be effective in discouraging incorrect claims that the purchase of residential property is actually of mixed-property?

25. One possibility would be that the mixed-use rules should continue to apply where the house is occupied for the purposes of a commercial trade i.e. a trade carried on in a business-like manner with a view to profit and which is capable of making a profit i.e. not a hobby.

- Clawbacks could apply so the property has to be used for the purposes of the trade for, say, 6 years;
- Clawbacks would apply if the trading land were sold away shortly after the purchase (say 5 years);
- If the purchaser is a genuine trader, then the requirement to trade would not impact on them as the ability to trade from the premises would be the purpose of the purchase. A 'hobby' farmer would have to:
 - i. Demonstrate commerciality
 - ii. Take the risk of losing money; or
 - iii. Pay tax on any profits they make.
- Use the ATED rules to determine what is a farmhouse and adapt for other trades:

- The occupier would have to be actively involved in the trade so someone using a contractor to farm whilst they ran another business would struggle to fulfil the criteria.
- The definition of a farmer (or other trader) could be derived from the ATED rules in FA 2013, s 149(1).

Q14 - How do the rules for mixed-property feature in commercial decision making?

26. We understand that in our members' experience the rules do not generally feature in commercial decision making because in most cases the intention is either to buy a house or a business. There can be debate over the mixed-property rules, but the level of SDLT is not generally the deciding factor.

Q15 – What would be the impact of changes to the mixed-property rules for businesses that typically make purchases of both residential and non-residential land, for instance corner shops, bed and breakfasts, pubs? Please consider both change in the form of apportionment and a threshold.

27. See our response to Question 13. Provided the business is run as a commercial trade, it would be preferable for the mixed-use rules to continue in their current form. Further consideration would need to be given to identifying commercial trades, including consideration of the ATED rules - in particular the rules for farmhouses (FA13/S148/S149) which could be adapted to take account of non-farming businesses.

Questions about Multiple Dwellings Relief

Q16 - What are respondents' views on the introduction of an intention test?

28. An intention test could have considerable merit, especially when combined with a claw back period. It would need to be made as objective as possible so that it is clearly understood, for example:

- Defining who a non-qualifying individual is, and
- That they are not allowed to occupy on an open market rent and retain relief.

29. At present, there is still poor appreciation of the concept of a "non-qualifying individual".

Q17 - What are respondents' views on the application of the proposed three-year post transaction period?

30. Conceptually the 3 year period should be acceptable, assuming it is properly understood.

Q18 - What impacts would Option 1 have on businesses?

31. One of the main problems with SDLT is complexity. Businesses generally tend to be better advised than individuals. A business should be able to include property bought for trading purposes where for some reason the mixed-use rate would apply, for example, houses for growers, or similar, where an employee requires residential accommodation to carry out their employment.

Q19 - Do you foresee any issues with the proposed method of calculating the relief?

32. No, we do not foresee any issues with the proposed method of calculation.

Q20 - Are there any other types of property-related businesses purchasing residential property (and which support the aims of MDR) which should qualify for relief under Options 1 or 2?

33. The purchase of properties for job-related accommodation for employees as suggested in our response to Question 18, where groups of properties are purchased.

Q21 - What would be the impact of Options 1 and 2 on the structuring of commercial transactions involving the purchase of dwellings?

34. We have no comments on this question.

Q22 - Does Option 3 introduce any other impacts on businesses?

35. Businesses should generally be seeking professional valuations in any event, particularly where borrowing is required.

Questions about all the MDR Options

Q23 - What do you see as the advantages and disadvantages of each of the options set out above?

36. We would summarise these as follows:

Option 1

Advantages

- Simplicity in concept.
- Intention should be more objective than the current interpretations of separate dwellings.

Disadvantages

- Will require education of conveyancers and ensuring that purchasers realise the importance of adhering to the legislation for the 3 year period.

Option 2

Advantages

- Simplicity for private buyers who are buying a large property with more than one building.

Disadvantages

- HRAD should not be chargeable on the additional properties if there is no MDR. That would increase complexity.

Option 3

- Option 3 has the advantage of providing relief for those within the intended policy. The definition of business should be expanded to include commercial trades.

Option 4

- A three dwellings rule should work for private individuals.
- Genuine developers should not be caught by new rules if a business use test is included. The 3 property rule in isolation would disadvantage smaller developers.

Q24 - Are there any other solutions to the problem described above not covered by the options in this consultation and which would, in your view, tackle the problem more effectively and efficiently?

37. We have been told that one of the main causes of problems with MDR is that many conveyancing solicitors are reluctant to give SDLT advice due to the complexity of the legislation. Consequently, unless the solicitor is a specialist firm, MDR may not always be considered and claimed (or rejected where appropriate). The lack of knowledge and understanding of the legislation and guidance appears to have given rise to some of the abuse mentioned in the consultation.

38. Simplification and education would assist in improving compliance.

Q25 - Would options 1, 2 and 4 have any material negative impact on the purchase of property which contains, for example, an annex which is intended to provide accommodation to an aged

or vulnerable person, typically a relative? If so, would option 3, either alone or in combination with the other options, present a solution to this negative impact?

39. We have no comments on this question.

Questions concerning MDR more generally

Q26 – How does MDR feature in commercial decision making?

40. We have no comments on this question.

Q27 To what extent does the availability of MDR impact purchasing decisions where the six or more rule applies?

41. We have no comments on this question.

Q28 - To what extent does MDR currently impact on the supply of housing for both rental and purchase?

42. We have no comments on this question.

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