

Updated HMRC guidance

HMRC has now updated its guidance on the meaning of 'garden or grounds' and this guidance is contained in SDLTM00440 to SDLTM00480 (see tinyurl.com/y44eky8z).

Needless to say, this updated guidance does not distinguish between land that is required for the enjoyment of the dwelling and land that is not. Indeed, the manual at SDLTM30030 has been altered so that the statement that grounds includes land which is needed for the reasonable enjoyment of the dwelling has been deleted and replaced with a reference to the updated guidance at SDLTM00440 to SDLTM00480. There is no indication at SDLTM30030 of this alteration, even if we click on the link in the heading to it marked 'see all updates'.

The updated HMRC guidance begins with a statement that it was introduced on 25 June 2019 and the main points can be summarised as follows:

- 1) It states: 'For the purposes of SDLT there is no statutory concept of "reasonable enjoyment" and no statutory size limit that determines what "garden or grounds" means.'
- 2) The guidance notes that another definition of garden or grounds is to be found in the SDLT legislation at FA 2003, Sch 4A para 7(3) (the 15% higher rate), FA 2003, Sch 4ZA para 18(3) (the 3% higher rates for additional dwellings) and FA 2003, Sch 6B para 7(3) (multiple dwellings relief). In those provisions, the definition used is: 'Land that is, or is to be, occupied or enjoyed with a dwelling as a garden or grounds (including any building or structure on that land) is to be taken to be part of that dwelling.' However, FA 2003, s 116(1)(b) refers to 'land that is or forms part of the garden or grounds of a building within para (a) (including any building or structure on such land)'.
- 3) There is a rather confusing passage at SDLTM00450 which states correctly: 'The status of the land in question must be assessed at the effective date of the transaction...' However, it goes on to state: 'But that does not mean that only the use on that day will be considered.' This is followed by the suggestion that: 'We should seek to establish the traditional or habitual use of that land to establish its true relationship to the building.' This guidance is not always followed by HMRC in enquiries. For example, in the case of surplus land that is let commercially for grazing sheep or horses or for hay cutting when the licence ended in the autumn and was not renewed until after the purchaser acquired the property at the end of the year, HMRC says that because the commercial use was not in existence on the effective date, it should be ignored and the land treated as residential property.
- 4) Further confusion is evident at SDLTM00460. There, it is said that the type of use can determine whether or not the land in question forms part of the grounds of the building. But this surely asks the wrong question. The grounds of a dwelling may well include land let for commercial purposes and the consequences will be that while that part remains a part of the grounds, for the purposes of the definition in s 116(1)(b) it will not be classed as residential property.
- 5) Paddocks and orchards will 'usually be residential, unless actively and substantively exploited on a regular basis'.
- 6) Commercial farming and horticulture, commercial woodland, commercial equestrian use or 'some other

commercial use' indicates that the land may not be residential property.

- 7) The extent and size of the land in question will also be relevant and, in the case of a small country cottage bought with dozens of acres, that land is unlikely to be treated as 'grounds', but may be treated as such in the case of a stately home. Large tracts of fells and moorland and the like when purchased with a dwelling are unlikely to be residential in nature. The test is whether the grounds comprise the grounds of a dwelling (SDLTM00470).
- 8) Other factors indicating that land is non-residential include when a non-domestic rateable value for the property has been assessed, non-domestic rates are collected, or the property has been classified as agricultural and, as such, is exempt from business rates.

Thoughts on the updated guidance

Two principal points come to mind on the subject of the updated guidance.

“Further confusion is evident at SDLTM00460. There, it is said that the type of use can determine whether or not the land in question forms part of the grounds of the building.”

First, the statement referred to in (1) above in SDLTM00440 that there is no statutory concept of 'reasonable enjoyment' is rather disingenuous. While strictly true, that has always been the case and it ignores without explanation HMRC's previous guidance at SDLTM20070 and SDLTM30030 and Statement of Practice 1/03 (see again 'Keeping it quiet') which stated clearly that HMRC applied a 'reasonable enjoyment' test to determine the extent to which the grounds of a dwelling were residential property. No explanation or justification of why this guidance has been changed has been given. In current and future SDLT enquiries, if taxpayers find that investigators are quoting the statement above from SDLTM00440, they should take the investigator to the previous parts of the *Stamp Duty Land Tax Manual* and Statement of Practice 1/03 and point out that this guidance was given in relation to the same statutory definition of residential property and that nothing material has occurred in the interim period to render such guidance less relevant. The withdrawal of the exemption for land disadvantaged areas is surely not relevant and has no bearing on the meaning of the definition.

Second, the guidance at SDLTM00470, discussed at (7) above, is potentially quite helpful to taxpayers and could be interpreted as re-admitting the 'needed for the reasonable enjoyment' test by another door. This is because, by conceding that physical proximity to the dwelling is a relevant test and also that the extent and size of the land in question are relevant, the guidance, in effect, reintroduces a 'reasonable enjoyment' test. By stating expressly that a small cottage is 'unlikely to command dozens of acres', HMRC is implicitly recognising that some of these dozens of acres purchased with

