



WELCOME to this presentation on:

An Examination of SDLT

With Patrick Cannon



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My talking points:

- Overview of recent case law
- Mixed-use properties
- Multiple Dwellings Relief



Recent case law: *Troy Homes v HMRC* [2020]

In this case, the First-tier Tax Tribunal considered whether enquiry notices which HMRC said were properly issued to both appellants were served on the two companies within the statutory enquiry period in accordance with Schedule 10, paragraph 12 Finance Act 2003.

I appeared for the taxpayers and successfully argued that the enquiry notices served on both taxpayers were not properly served within the relevant time limit so that the additional tax charged by HMRC's closure notices was cancelled.

The appeal also drew attention to a defect in the way in which the SDLT return form captures the correct address for service of an enquiry notice on the taxpayer.

[Troy Homes v HMRC \[2020\]](#)



Recent case law: *Moaref v HMRC* [2020]

I represented the taxpayers in this appeal where the tax tribunal decided that the refund of the 3% higher rates on the sale of a main residence following the acquisition of the replacement was not available when the taxpayers had purchased two side-by-side apartments a few weeks apart with the intention of amalgamating them to form one apartment as their replacement main residence prior to the sale of their old main residence.

The decision has some helpful analysis of how to interpret the provisions in [Schedule 4ZA FA 2003](#).

[*Moaref v HMRC* \[2020\]](#)



Recent case law: *Waterside Escapes Ltd v HMRC* [2020]

This appeal, in which I appeared for the taxpayer company, contains a detailed analysis of the scope of the 15% SDLT charge under Schedule 4A FA 2003 and whether there was ‘representative occupation’ by a director and also of the sum of the lower proportions calculation in para 20 Schedule 15 FA 2003 and the attribution of control to associates within section 451 CTA 2010 in a purchase by a company from an LLP whose partners were connected with the purchasing company - see next slide.

[*Waterside Escapes Ltd v HMRC* \[2020\]](#)



Recent case law: *Waterside Escapes Ltd v HMRC* [2020]

The company bought a residential property from a husband and wife LLP for £1,250,000 to run as a holiday let business. The company shareholders were the wife (50%) and an outside investment trust (50%). The company did not pay the 15% rate of SDLT.

The wife stayed in the property for four nights within the three years after the purchase but this did not cause the 15% to be due in itself because it was accepted by the tribunal that she stayed there in a representative capacity.

However, the shareholders' agreement permitted members to stay in the property for their personal benefit for up to five nights a year. The tribunal decided that this meant that the company did not acquire the property exclusively for the purpose of a property rental business, because it was intended at the time "that a non-qualifying individual will be permitted to occupy". Hence the exemption from the 15% did not apply.

On the partnership point it was agreed that 50% came off the value of the property on the basis of the wife:

- having a 50% income share in the vendor LLP
- being treated as having control of the company purchaser by virtue of her and the outside trust "acting together to control" the company but on her own her negative control was not "control"

But the husband was not treated as having control of the company:

- whilst the 50% shareholding of the wife was attributed to him, that alone would not give him control
- the shareholding of the outside trust was not attributed to him, even though it was attributed to the wife.

The Sum of the Lower Proportions only came to 50% instead of 100%.



Mixed-use properties

Section 116(1) FA 2003

Hyman v HMRC [2019] :

'In my view "grounds" has, and is intended to have, a wide meaning. It is an ordinary word and its ordinary meaning is land attached to or surrounding a house which is occupied with the house and is available to the owners of the house for them to use.....Land would not constitute grounds to the extent that it is used for a separate, eg commercial purpose. It would not then be occupied with the residence, but would be the premises on which a business is conducted.'





Mixed-use properties

- Reasonable necessary for enjoyment test?
- Grazing or fishing licences?
- Timing of licences
- Who suggested licence?
- Historical farming use?
- When 15% rate applies to the dwelling?





Multiple Dwellings Relief

What counts as a dwelling?

[Para 7 Schedule 6B FA 2003](#)



Council Tax definition

The way that “dwelling” has been defined for [Council Tax](#) and VAT purposes is instructive here, although not determinative.



VAT definition

VATA 1994, Sch 8 group 5 note 2



(2) A building is designed as a dwelling or a number of dwellings where in relation to each dwelling the following conditions are satisfied—

(a) the dwelling consists of self-contained living accommodation;

(b) there is no provision for direct internal access from the dwelling to any other dwelling or part of a dwelling;

(c) the separate use or disposal of the dwelling is not prohibited by the term of any covenant, statutory planning consent or similar provision; and

(d) statutory planning consent has been granted in respect of that dwelling and its construction or conversion has been carried out in accordance with that consent.



Fiander and Brower v HMRC [2020]

In this appeal I represented the taxpayers in a claim for Multiple Dwellings Relief in the context of a main house plus granny annex which were connected by a short corridor but not a lockable internal door at the effective date and whether they were each suitable for use as a single dwelling. This case contains some useful analysis of the meaning of “dwelling” and the equivalent case-law for the purposes of VAT and Council Tax.

[*Fiander and Brower v HMRC* \[2020\]](#)





Fiander and Brower v HMRC [2020]

“66. These considerations incline us to conclude that it would be wrong to determine “suitability for use” at the time of completion on the assumption that a door, or doors, or some other physical barrier, would be introduced to the corridor. This is because the suitability test in paragraph 7 is an objective one based on the physical features of the property as at completion – it cannot be performed on the assumption that new physical features will be introduced to enable a new and different kind of use. This is the case even if the new physical features are relatively easy or quick to install.”





Fiander and Brower v HMRC [2020]

“69. It will be seen from the foregoing discussion that we have not put a great deal of weight on the evidence that the annex had no separate utility meters or council tax status – this points in the same direction as our conclusion, but we did not place great weight on these factors. Similarly, we did not place great weight on the evidence of a separate postal address for the annex (we acknowledge that the sending of post to the annex was supportive of its “single” status, but do not consider this a very significant factor). We placed no weight on the evidence regarding the “restrictive covenant” in the land registry, which was unclear in itself and in its implications for the issues at hand.”





THANK YOU

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