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'GROUNDS' OF A PROPERTY

A WIDER MEANING FOR SDLT PURPOSES THAN FOR CGT PURPOSES

JEFF WEBBER
Tax Director
jeffrey.webber@bdo.co.uk

In Tax Insight, August 2018, we looked at HMRC's guidance on the meaning of "residential property" for Stamp Duty Land Tax (SDLT) purposes. At that time, there was little guidance on what constituted the "grounds" of a property. However, HMRC has since updated its guidance, and in a recent case the First-tier Tax Tribunal (FTT) decided that "grounds" had a wider meaning for SDLT purposes than for CGT purposes.

INTRODUCTION

There is no statutory definition of the "grounds" of a residential property for SDLT purposes. In the recent David Hyman and Sally Hyman v HMRC case, the FTT had to consider whether certain parts of a property constituted "grounds" for this purpose.

THE FTT RULING

THE FACTS

The taxpayers purchased a residential property comprising a farmhouse with over 3.5 acres of land, including gardens and a meadow. A public bridleway ran through the land and there were various outbuildings, including an ancient dilapidated barn. The purchase price was £1,515,000, and SDLT of £95,550 was paid on the basis that the SDLT return filed by their solicitor related to property that was entirely residential within the definition of s116(1) FA 2003. This section states that "residential 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 property" means any property that is not residential property.

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THE ARGUMENTS

The taxpayers subsequently engaged an SDLT consultant and claimed overpayment relief on the basis that the property was mixed use and that non-residential SDLT rates applied, resulting in an overpayment of £34,950. Although there was no commercial use of the barn, meadow and bridleway, it was argued that those parts of the grounds were nevertheless non-residential. HMRC refused the claim, on the basis that the entire property was correctly treated as residential in the original SDLT return.

At the time, HMRC's SDLT Manual did not contain guidance on the meaning of "grounds", so at the FTT hearing, the taxpayers' representative sought assistance from the guidance in HMRC's CGT Manual, and also from two CGT cases. It was suggested that, using the 'reasonable enjoyment' test in S 222 CGTA 1992, the meadow, barn and bridleway were not required for the reasonable enjoyment of the farmhouse, so they were not part of the grounds.

The FTT Judge considered that "grounds" in S 116(1) should take its ordinary wide meaning, covering land attached to or surrounding a house which is occupied with the house and is available to its owners for them to use as they wish. In contrast to the CGT legislation, there is no requirement for active use by the owners or use by them for any particular purpose, such as ornamental or recreational. In the present case they remained as "grounds" even though the meadows had been allowed to grow wild; the barn was a building on the grounds and was therefore part of the grounds, despite being classed as non-residential for planning purposes. The public bridleway and the division of the land into parts by hedges and fences did not prevent the entire 3.5 acres from being the grounds of the residence.

Importantly, the judge stated that land would not constitute grounds to the extent that it is used for a separate, e.g. commercial, purpose: it would not then then be occupied with the residence but would be business premises.

HMRC'S UPDATED GUIDANCE

HMRC had revised its SDLT manual a few weeks before the above judgment was released, setting out in detail what it now considers to constitute "garden or grounds" at paragraphs SDLTM00440 – SDLTM00480. However, there is no indication that the revised guidance was brought to the attention of the FTT.

The revised guidance is in line with the above judgment, stating at the outset:

- For SDLT purposes there is no statutory concept of 'reasonable enjoyment' and no statutory size limit that determines what 'garden and grounds' means
- It should not be assumed that qualifying as 'grounds' for CGT purposes will equate to being 'grounds' for SDLT purposes. Land can still be 'garden or grounds' for SDLT even if it is of such a size that for CGT it would be said not to be required for the reasonable enjoyment of the dwelling.

HMRC sets out the steps it considers necessary when considering whether land is garden or grounds:

1. Establish that the building is a dwelling
2. Establish the status of the land
3. Form a balanced judgement, which involves weighing up all relevant factors, including:
   - Use
   - Layout
   - Geographical factors
   - Legal factors and constraints.

The guidance contains detailed explanations and examples, which will assist advisers in considering the position in different cases.

The guidance at SDLTM00440 jncludes the comment that for SDLT purposes there is no statutory concept of "reasonable enjoyment" and no statutory size limit that determines what "garden or grounds" means. However, the following commentary at SDLTM00470 is helpful:

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"The extent/size of the land in question will also be relevant in relation to the building. A small country cottage is unlikely to command dozens of acres of grounds but a stately home may do. Large tracts of fells/moorland etc. (even if purchased with a dwelling) are unlikely to be residential in nature. The test is not simply whether the land comprises gardens and grounds, but whether it comprises the gardens and grounds of a dwelling."

CONCLUSION

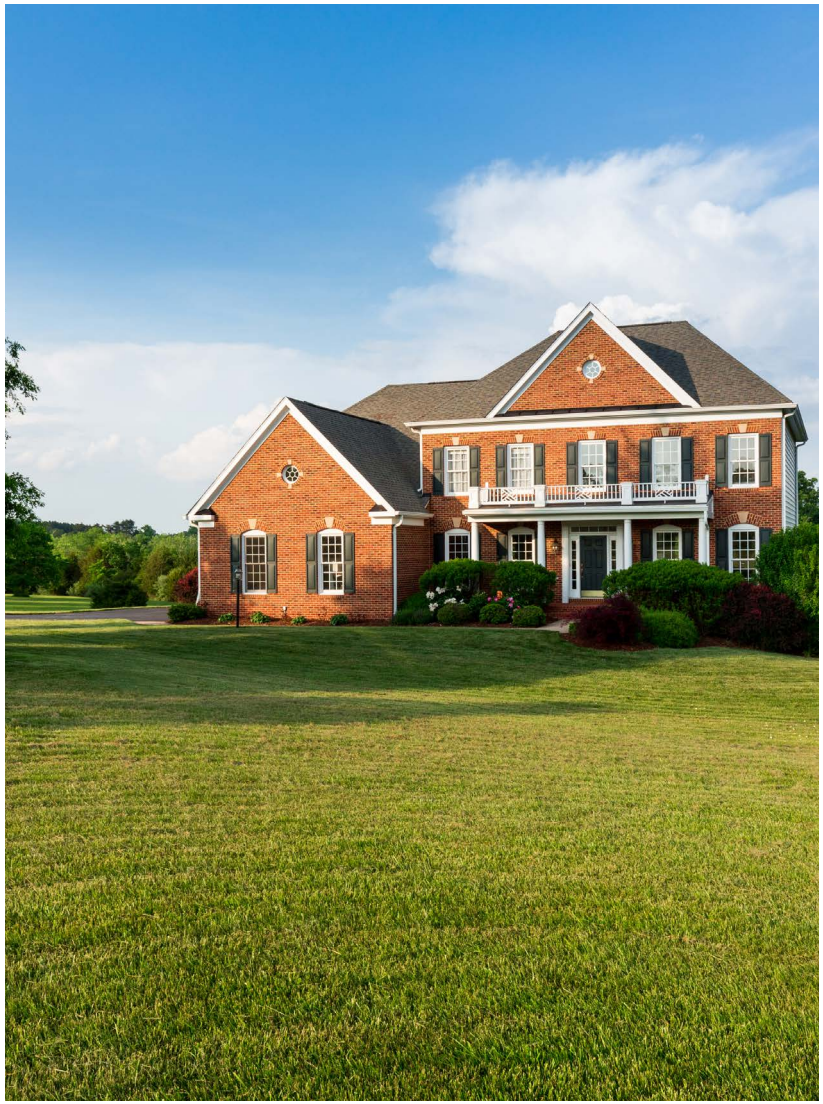
An FTT decision does not set a legal precedent, but is of persuasive value, and HMRC will presumably refer to this decision when refusing similar claims based on this type of argument, unless it is over-ruled by the Upper Tribunal in future.

As highlighted by the judge, land will not constitute grounds to the extent that it is used for a separate, e.g. commercial, purpose. Where this is the case, supporting evidence should be submitted to HMRC, such as photographs of the land being used for the activity in question, and copy documentation such as licence agreements and surveyors' reports.

Conversely, the above case also serves as a reminder that other available documentation and evidence may support HMRC's position, as in this case HMRC pointed out that:

- The estate agent which dealt with the sale of the property to the taxpayers described the whole of the land as gardens extending to 3.5 acres, and referred to the bridleway as an integral part of the grounds. The Judge acknowledged that such sales literature does not determine the status of land, but commented that "…the property is clearly being presented as an integral whole, with different elements which might be used in different ways. That is how it would appear to the reader, and the reality of the property is consistent with that presentation."
- Pre-Application Advice relating to the development of the barn indicated that, in the view of the planning officer, the barn was within the curtilage of the farmhouse – in other words, part of the grounds.

Advisers do therefore need to check whether such documentation might contradict or undermine any arguments made in support of the taxpayer's position.



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For more information about how we can help you and your clients please contact:

JEFF WEBBER
jeff.webber@bdo.co.uk
+44 (0)207 893 3578

MALCOLM PENGELLY
malcolm.pengelly@bdo.co.uk
+44 (0)207 893 2936

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