TURCAN CONNELL

Briefing Note

Annual tax on enveloped dwellings

Introduction

The Annual Tax on Enveloped Dwellings (ATED) was introduced in April 2013 as part of a package of measures designed to discourage corporate ownership of UK residential property.

There are three strands to this package:

- Acquisition: in England, Wales and Northern Ireland, non-natural persons acquiring UK residential property are liable for SDLT at 15% instead of the normal SDLT rates. SDLT does not apply in Scotland, having been replaced by LBTT on 1 April 2015. There is no corresponding provision under LBTT, and therefore normal LBTT rates apply.
- Ownership: an annual charge is imposed on non-natural persons owning UK residential property of more than a specified value. This is explained in more detail below.
- Sale: when a property is sold the element of the gain referable to the period during which the property fell within the ATED regime will suffer ATED-related capital gains tax which is charged at 28%.

The ATED regime originally applied to properties worth more than £2m so relatively few companies were caught by these provisions. However, the regime has been gradually extended to include properties worth more than £1m from April 2015 and properties worth more than £500,000 from April 2016.

Non-natural persons

The ATED regime applies to “non-natural persons” defined as:

- companies;
- partnerships with one or more corporate partners; and
- collective investment schemes.

Individuals, trusts and partnerships comprised of individuals are not affected by these rules.

The annual charge

The ATED charge will depend on:

- the value of the property at the most recent valuation date;
- the charge for the band within which the property value falls; and
- whether or not a relief is available for all or part of the ATED year.

The ATED charges applicable from 1 April 2019 can be summarised as follows:

Property Value at later of acquisition or 1 April 2017	ATED Charge from 1 April 2019
Less than £500,000	N/A
£500,000 - £1m	£3,650
£1m - £2m	£7,400
£2m - £5m	£24,800
£5m - £10m	£57,900
£10m - £20m	£116,100
More than £20m	£232,350

Generally, the appropriate band is based on the property's value at 1 April 2017. Property values are required to be updated on a five-yearly basis – so the next review date will be 1 April 2022. If the property was acquired after 1 April 2017, or there is a substantial acquisition or disposal of part of a property, the value at this date should be used.

If the property is sold after the 1 April 2019, the taxpayer is entitled to a repayment of relevant portion of the ATED charge, based on the number of days in the year that the property was owned.

In some circumstances, a taxpayer may request a pre-return banding check from HMRC to determine the appropriate value band for the property.

Reliefs

A number of reliefs are available.

The most common are for:

- Property rental business – where property is let to an unconnected third party
- Property development and trading businesses
- Farmhouses
- Property occupied by certain employees or partners
- Property open to the public

If a relief applies for a full ATED year then there will be no annual charge for that year. If a relief only applies for part of an ATED year, the annual charge will be reduced to reflect the proportion of the year covered by the relief.

The relief(s) must be claimed each year by submitting an ATED return.

Administration

The ATED year runs from 1 April to the following 31 March.

An ATED return must be submitted within 30 days of the start of the tax year to which it relates. Therefore, the ATED return for the ATED period from 1 April 2019 to 30 March 2020 must be submitted by 30 April 2019. If a property is purchased part way through an ATED year, the purchaser has 30 days from the date of purchase to submit the appropriate ATED return and to pay the ATED charge for the remaining part of the year.

The ATED charge is payable at the same time as the return is due.

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Penalties may be charged if a company fails to make an ATED return or submits an incorrect return. Interest will be charged if the ATED liability is paid late. Penalties will still be due on late returns even where there is full relief available on the ATED charge.

De-enveloping

The extension of the regime to properties worth more than £500,000, together with the high level of annual charge, means that many companies who already own UK residential property could now find themselves paying the annual ATED charge every year. This is expensive and shareholders may wish to consider winding up this structure. However, the tax implications of such a decision should be carefully considered including:

- Company's tax liability on selling/transferring the property
- Shareholders' capital gains tax position if the company is liquidated
- Shareholders' income tax position if the property is paid out as a distribution in specie

If you require further information, please contact a member of the Turcan Connell tax team.

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