

ATED and the ATED-related CGT charge

ATED

The annual tax on enveloped dwellings (ATED) was introduced on 1 April 2013 as an annual charge for certain high value residential properties owned by non-natural persons such as companies, collective investment schemes, or partnerships with a company member. It should be noted that the ATED legislation applies to both non-UK and UK entities.

Why was the charge introduced?

ATED was introduced to counter SDLT avoidance schemes using corporate entities, but it also affects many structures that were set up to mitigate an individual's exposure to UK inheritance tax and for other, non-tax reasons.

How much is the ATED charge?

The annual ATED charge (based on the property value) is increased each year in line with the consumer price index and the rates for 2018/19 are:

Property Value	Annual charge
more than £0.5m but not more than £1m	£3,600
more than £1 but not more than £2m	£7,250
more than £2 but not more than £5m	£24,250
more than £5 but not more than £10m	£56,550
more than £10 but not more than £20m	£113,400
more than £20m	£226,950

If the dwelling is held for part of a year or moves in or out of the ATED charge, the ATED will be calculated on a proportionate basis.

Valuations are required every five years, the first valuation date was 1 April 2012 which covered the chargeable periods up to 31 March 2018. The last valuation date was 1 April 2017, covering the next five chargeable periods from 1 April 2018 to 31 March 2023. The next valuation date will be 1 April 2022.

During 2013/14 - the first ATED period - the charge only applied to properties which were valued at more than £2m at 1 April 2012 (or later if the dwelling was acquired after this date). For the 2015/16 chargeable period, the threshold dropped to include properties valued at more than £1m, and for periods from 2016/17 onwards the threshold has been further reduced to **£500,000**.

HMRC will provide a pre-return banding check to confirm the banding that the property is within, provided the owner reasonably believes the property value is within a 10% variance of the banding threshold and relief is not available to reduce the ATED charge to nil.

Submission and payment dates

Tax is payable and an ATED return is due for each ATED period (which runs from 1 April to 31 March)

- **Within 30 days** of the beginning of the chargeable period if the property is within the scope of ATED at this point (i.e. for a 2018/19 ATED period, the beginning of the chargeable period is 1 April 2018, therefore the deadline for submission and payment was 30 April 2018).
- Or, **within 30 days** of acquisition if the property is acquired during the chargeable period
- Or, **within 90 days** of the earliest date the property becomes a dwelling for council tax purposes or is first occupied as a dwelling if the dwelling

is newly constructed or adapted for use as a dwelling after acquisition. However, it should be noted that an off plan transaction that includes an interest in a building or a part of a building that is to be constructed or adapted for use as a single dwelling is normally subject to the 30 day filing deadline.

Penalties

Penalties will arise for late payment and filing and are the same as those which apply to self-assessment late filing and payment.

Reliefs

Relief from the ATED charge is available if the property is used for certain qualifying purposes which broadly include the following:

- Dwellings that are rented on a commercial basis with a view to a profit
- Properties that are part of a genuine property development business or property trading business
- Properties that are run as a commercial trade carried on with a view to a profit and open to the public for at least 28 days per year
- Properties held as employee accommodation by a qualifying trading business, as long as the occupying employee's interest is less than 10% of the trade profits (for trades, property rental businesses and partnerships) or, the employee is entitled to a 10% or greater share in any company that is entitled to the single dwelling in question, or in that single dwelling interest itself
- Farmhouses occupied by working farmers or qualifying former long serving farmers (or their surviving spouses or civil partners).

In addition to the above, there are other reliefs available providing certain conditions are met.

If eligible for relief, the ATED charge can be reduced to nil but must be claimed via a Relief Declaration Return (RDR). A different RDR must be completed for each type of relief but, once made, the declaration will cover all properties owned by the same non-natural person qualifying for the same relief in the same tax year. The filing deadline for the RDR is the same as that applicable for the ATED return mentioned earlier.

Exemptions

Properties held for charitable purposes that are not occupied by substantial donors or their associates are exempt from ATED. Certain other entities are exempt from ATED including public bodies, and bodies established for national purposes.

ATED-related chargeable gains

In addition to the SDLT and ATED charges, non-natural persons owning property that has been liable to ATED for one day or more during its period of ownership are liable to an ATED-related capital gains tax (CGT) charge (or chargeable gain, in relation to companies). The charge applies to companies disposing of relevant property after 5 April 2013. This charge currently takes precedence over the non-resident CGT charge, introduced from 6 April 2015 on the disposal of UK residential properties by non-residents, however with the planned extension of NRCGT to all UK properties of non-residents from April 2019, it may be that the future of the ATED-related CGT charge will be reconsidered at that time.

The rate at which CGT is charged on disposals of residential property is 28% although tapering relief is applicable for properties disposed of for consideration just over the ATED starting threshold.

Dwellings liable to the ATED-related CGT charge will have their values rebased as at the date on which the property came within the scope of ATED. Therefore, dwellings worth more than £2m will be rebased to their value on 5 April 2013, dwellings worth more than £1m but not more than £2m will be rebased to their value on 5 April 2015 and dwellings worth more than £0.5m but not more than £1m will be rebased to their value on 5 April 2016. Any increase in value from the rebasing date is potentially liable to the ATED-related CGT charge on a subsequent disposal but the chargeable gain will be reduced proportionately for any day that the dwelling qualified for ATED relief. An irrevocable election can be made to disapply the rebasing treatment, this may be appropriate if the property has since fallen in value.

ATED-related capital losses may be offset only against ATED-related chargeable gains realised in the same year, or they may be carried forward and offset against future ATED-related gains. Where a gain is assessed as an ATED-related gain, no other tax charge will apply to that gain. It is, however, possible for a disposal to give rise to a gain that consists of both ATED-related and non ATED-related gains. Where this occurs, CGT will be payable in respect of the ATED-related gain. The non ATED-related gain may be liable to corporation tax or CGT depending on the relevant charging provision.

15% stamp duty land tax

A 15% SDLT charge now applies on the acquisition of residential properties by non-natural persons where chargeable consideration is more than £500,000. This rate may be replaced by the SDLT higher residential rate (an additional 3% on top of the normal SDLT residential rates) if the property is used for a qualifying purpose. A purchase of a mixed residential/commercial property interest or the acquisition of six or more dwellings would normally mean that

the non-residential SDLT rates apply rather than the residential rates. Advice regarding the SDLT implications of any transaction involving residential property should be taken in advance of exchange of contracts.

Action required now

It is essential that all relevant entities (whether UK resident or not) holding UK residential property consider how the ATED and ATED-related CGT charges impact them. The position should be reviewed for properties valued at more than £500,000 at 1 April 2017.

All owners affected by the legislation need to ensure they have the relevant information to complete the ATED return and claim relief if appropriate. If the ATED and ATED-related CGT charges are unacceptable when compared to the benefits of retaining the structure, it is essential that the tax implications of de-enveloping are fully reviewed as this in itself can give rise to immediate and potential future tax charges.

Contact us

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