DIXON WILSON
CHARTERED ACCOUNTANTS

Annual Tax on Enveloped Dwellings

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INTRODUCTION

High value UK residential properties occupied by non-domiciliaries have been acquired within a company structure for a variety of different reasons, often for reasons such as privacy or to manage exposure to UK inheritance tax.

The Government introduced new rules with effect from 1 April 2013 to counter perceived (Stamp Duty Land Tax) avoidance resulting from corporate ownership of residential property. The rules initially applied to properties worth £2million or more. Over time, the value of the properties on which the rules applied has decreased to include, initially from 1 April 2015, properties valued at £1million or more and from 1 April 2016 properties valued in excess of £500,000. In addition, the amount of tax has increased significantly since its inception.

The tax, known as the Annual Tax on Enveloped Dwellings (ATED), is payable where high value 'dwellings' are held within a company or similar corporate structure. ATED applies both to non-UK resident companies and to UK resident companies.

THE ATED CHARGE

ATED is payable at the following rates:

Value of property (£m)	Annual tax charge (£)	
	2017/18	2016/17
0.5 - 1	3,500	3,500
1 - 2	7,050	7,000
2 - 5	23,550	23,350
5 - 10	54,950	54,450
10 - 20	110,100	109,050
20 +	220,350	218,200

THE QUALIFYING CONDITIONS

There are several criteria for ATED to apply:

The property must be within the definition of a 'dwelling' in the UK. The legislation introduces a new definition for a 'dwelling' and includes various anti-avoidance provisions to prevent multiple interests in a property being created so as to maintain values below the thresholds (e.g. separating freehold and leasehold interests).

The property must have been worth more than £500,000 on 1 April 2012 or at the date of acquisition, if later.

The property is owned, or part owned, by a company or other corporate vehicle (e.g. collective investment vehicle, some types of unit trust), or by a partnership which includes a corporate partner.

VALUATION OF RESIDENTIAL PROPERTY

For properties owned at 1 April 2012 the ATED charge will be based on the value of the residential property at that date. This valuation will apply for the first five ATED returns through to 2017/18 with revaluations required every five years thereafter. This is also the reference date for properties, which were subsequently added to the ATED regime, valued between £500,000 and £1million.

A new valuation is required as at 1 April 2017, to be used for the five years from 2018/19 to 2022/23.

The ATED tax return is prepared on a self-assessment basis by the tax payer. In many cases it will be appropriate to obtain a professional valuation so as to protect against penalties being levied by HMRC where incorrect valuations result in an underpayment of tax.

Where the valuation of a property is within a 10% variance of a banding threshold, it will be possible to ask HMRC to check that they agree with the banding before an ATED tax return is submitted. An application must be made at least 30 days prior to the ATED tax return deadline (i.e. by 31 March).

ATED TAX RETURN DEADLINE AND DATE OF PAYMENT

The ATED return, and payment, will be due by 30 April following the beginning of the ATED period (i.e. for the ATED period 1 April 2017 to 31 March 2018, the ATED tax return and the payment of tax is due by 30 April 2017).

If there is a change in the way the property is owned (after 1 April 2013) ATED will be calculated on a proportionate basis for the relevant ATED period.

For any property acquired during the year, the ATED return and payment will be due 30 days after acquisition, which is generally the date of completion or conveyance or the date the contract is 'substantially performed'.

EXCLUSIONS AND RELIEFS FROM THE NEW RULES

There are various exclusions and reliefs from the new rules, including:

Hotels, hospitals, student halls of residence and other properties are outside the definition of a 'dwelling'.

There are certain exemptions for properties held by property developers.

Corporate trustees of a trust are not included within the charge.

Companies which serve as nominees are not within the charge (it is the beneficial owner of the property which is important for the ATED charge).

Relief is available for companies carrying on genuine commercial activities such as letting the property to a third party on a commercial basis (provided the property is not at any time occupied by a connected person).

Relief is also available for 'historic houses' and 'working farmhouses'.

The reliefs must be claimed on an ATED tax return, and consequently, companies that qualify for relief will still need to file a return.

OTHER IMPORTANT CHANGES TO CAPITAL GAINS TAX RULES FOR RESIDENTIAL PROPERTY

In addition to the new ATED, significant changes to Capital Gains Tax (CGT) on disposal of residential property have been introduced. For the first time, non-UK resident companies which dispose of a UK residential property on or after 6 April 2013 will be exposed to tax at 28% on the increase in value which accrues:

- From 6 April 2013 onwards for properties valued in excess of £2million on 1 April 2012;
- From 6 April 2015 onwards for properties valued in excess of £1million on 1 April 2012; and
- From 6 April 2016 onwards for properties valued in excess of £500,000 on 1 April 2012.

UK companies falling within the ATED regime will also be subject to the 28% rate of tax on disposals of qualifying properties, subject to the rebasing referred to above. The gain which does not qualify for rebasing is subject to corporation tax at the usual rates.

ATED CGT is charged in priority to the non-resident CGT introduced from 6 April 2015.

WHAT NEXT FOR EXISTING PROPERTIES?

Tax payers are recommended to review their specific circumstances. There is significant detail to the rules and companies holding residential dwellings are recommended to seek advice.

It may be appropriate to change the ownership of the property to avoid the ATED, or it may be appropriate to leave the structure in place and to consider how the tax will be funded. There are other changes to UK tax legislation, such as the deductibility of certain debts for IHT purposes, and the potential charge to IHT on any UK residential properties, which will impact on the options available for restructuring.

Dixon Wilson can assist with a review of the options of owning residential property in a tax-efficient manner, as well as the preparation of ATED tax returns.

WHAT ABOUT NEW PROPERTY ACQUISITIONS?

Since the ATED rules will apply to new property acquisitions, it is strongly recommended that advice is sought prior to purchase so the acquirer is fully aware of their options and any ongoing UK tax implications.

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