SQUIRE PATTON BOGGS

IS ATED TAX DEDUCTIBLE?

An interesting debate is taking place about whether the annual tax on enveloped dwellings(ATED) charge is deductible by the company for tax purposes.

At first sight, one is inclined to think not, but on further analysis there seems no good reasonwhy the charge should not be deductible, assuming of course that there is an appropriate sourceof income from which it can be deducted. In many cases, the UK residential property held bythe company will not give rise to any income – nor would it form part of any property lettingsbusiness, even if the company had other rental income. And, of course, if it is let commerciallyto a third party, the ATED would not apply anyway. However, if it were to be let to a connectedperson on commercial terms, the ATED would still apply and the rental income would be taxable, so why should the charge not be deductible from the rents? the fact that it is a tax should not get in the way – employer's NIC is deductible and so are other taxes (such as insurance premium tax) – so what is so special about the ATED?

The position would seem to be even stronger where the company owning the property carries on a trade and the property is used by an employee who suffers a benefit in kind charge for his occupation.

I understand that HMRC does not consider that the ATED charge is tax deductible and I imagine an explanatory statement will be forthcoming before very long.

Another feature of the ATED is that any capital gain which is realised on a property subject to the ATED will be chargeable to capital gains tax on the company, but only on the gain beyond 5 April 2013. A valuation at 6 April 2013 is therefore required and there has been some uncertainty as to whether this should be an open market valuation or whether the specific capital gains tax valuation rules should be applied.

I notice that HMRC recently confirmed to the British Property Federation that the valuation is self-assessed by the property owner and 'therefore' an open market valuation can be used.

It may not matter very much, but I wonder why that is the case. this is a capital gains tax charge and the capital gain for this purpose is computed specifically by reference to TCGA 1992 Sch 4ZZA. We may be looking at the base value, rather than the disposal value, but that does not make any difference. Paragraph 3(2) provides that the relevant gain is computed on the basis that the property had been acquired on 5 April 2013 for a consideration equal to its market value on that date. Market value is not specifically designed for this purpose, so the specific valuation rules for capital gains tax in TCGA 1992 s 272 would seem clearly to apply.

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Article was first published in Tax Journal on 1 August 2014