

Residential property has been the subject of some significant changes in the tax regime over the past few years and continues to be in the spotlight for the forthcoming months as we await the publication of the Finance Bill 2015. At this juncture a quick recap on where we are up to may be helpful.

Worthy of note at the outset is that most of the changes have been centred on residential property only with various useful exemptions available for commercial property.

### **SDLT**

On 21 March 2012 we saw the introduction of a penal SDLT rate of 15% applicable to certain purchases of residential property with a value in excess of £2 million.

From 20 March 2014 the 15% SDLT rate was extended to the acquisition of residential property in excess of £500,000 (unless the transaction is deemed to have occurred before that date for example as a result of an existing contract having been substantially performed).

This SDLT rate applies where UK "residential property" is acquired by "non-natural" persons.

A non-natural person is broadly a company or foreign entity equivalent, a collective investment scheme or any partnership which includes a corporate partner. Nominees and trustees are excluded.

Residential property is broadly defined as a single dwelling interest, a building or part of a building used as a dwelling or a building to be converted to a dwelling.

The lower commercial property SDLT rate will not apply where the purchase is a mixed use commercial and high value residential property.

There are exemptions available under the existing SDLT legislation for charities, social housing, public bodies etc. The other reliefs available mirror those available for ATED (see below).

### **Annual Tax on Enveloped Dwellings (ATED)**

From 1 April 2013 the ATED is a lump sum levy applicable to property:

- owned by non-natural persons;
- valued in excess of £2 million; and
- not otherwise eligible for any exemption or relief.

ATED is a charge on high value residential property owned by both UK and non UK non-natural persons.

For the purposes of the ATED charge each dwelling must be valued separately and care should be taken where there are a number of interests in the same property. The ATED charge rises annually in line with CPI. The present rates are as follows:

<b>Property value on relevant valuation date<sup>^</sup></b>	<b>ATED charge</b>
In excess of £500,000 but less than £1million (from 1 April 2016)*	£3,500
In excess of £1million but less than £2million (from 1 April 2015)#	£7,000
In excess of £2 million but less than £5 million	£15,400
More than £5 million but less than £10 million	£35,900
More than £10 million but less than £20 million	£71,850
In excess of £20 million	£143,750

# From April 2015 ATED will apply to property valued in excess of £1 million. The 2015/16 ATED return filing date will be transitional and the return due 1 October 2015 and payment due 31 October 2015.

\*From April 2016 ATED will apply to property valued in excess of £500,000 with the charge set at £3,500. There will be no transitional provisions in relation to these filings therefore return and payment due date will be 30 April 2016.

<sup>^</sup>The relevant valuation date from 1 April 2013 to 31 March 2018 is 1 April 2012 unless the property is acquired later than this.

### **Relief**

There are some important reliefs from ATED (most of which extend to the ATED related CGT charge (see below) and SDLT as well) including:

- Dwellings used in a property rental business carried on by the owner
- Dwellings open to public for more than 28 days per tax year
- Dwellings for the purpose of property development trade carried on by the owner
- Dwellings held by the owner as a trading stock
- Dwellings acquired by financial institutions in the course of lending
- Dwellings used to provide employee accommodation to a qualifying employee
- Farmhouses occupied by the worker
- Providers of social housing

Relief is not available under (a), (c), (d) and (e) where the dwelling is occupied by a “non-qualifying” person even if full commercial rent is paid.

A non-qualifying person broadly means someone beneficially entitled to an interest in the dwelling or someone so connected, an individual in control of a company alone or with their connected persons, business partners, spouses, relatives, someone with a 50% entitlement to profits of a collective investment scheme.

## CGT

From 6 April 2013 CGT also applies to the same properties caught by the ATED. The effect of this CGT charge is softened as it only applies to increases in value beyond 6 April 2013.

From 6 April 2015 this ATED related CGT will apply to properties valued in excess of £1 million. From 6 April 2016 this ATED related CGT will also apply to properties valued in excess of £500,000.

The rate is fixed at 28% with no indexation on any ATED related element of a gain. A degree of rebasing is expected to extend to the 2015/2016 charges. There is an opportunity to opt out of rebasing if any accrued losses would make this beneficial.

From 6 April 2015 we are expecting a general extension of CGT to disposals of residential property by non UK residents.

The charge will be effective from 6 April 2015 albeit we have not yet seen the draft legislation (expected 10 December 2014). This tax will apparently apply regardless of the value of the residential property and have no such similar reliefs to ATED. The rates are not yet known but it seems individuals will be entitled to the CGT annual exemption and non UK residents may be taxed at 18% if their total UK income is insufficient to exhaust the income tax basic rate band. The rate of tax for corporates is not yet known but for EU reasons it may have to be in line with the UK corporation tax rate. The rate for trusts is expected to be 28%.

Losses incurred by a non-resident on the disposal of UK residential property should be available to offset against any gains realised on disposals of UK residential property.

The new CGT charge will apply to all UK properties used as a dwelling with certain exclusions including for certain properties used for communal purposes such as student halls of residence, nursing homes, prisons etc.

The tax will apply to all non-UK residents with certain proposed exemptions including non-resident pension funds and funds that satisfy a proposed “general diversity of ownership test.” The charge is intended to catch only “close companies” and any disposals of property held by institutional investors will fall outside the charge.

It is anticipated that the principal private residence relief will be altered in order to avoid non-UK residents simply electing for their UK home to be their principal residence eligible for relief. The question of whether an individual's residence is their main residence for the purposes of the relief will be determined as a question of fact looking at which residence the person has been present for most in any given tax year. It is anticipated that UK residents with existing elections in place will be allowed to continue to rely on these.

The collection mechanism for this new tax is not yet known but it is anticipated it will be a withholding tax at the point of sale unless those non-resident persons are already within the self-assessment regime.

The new CGT charge on non-residents (below) is expected to take precedence over ATED CGT going forward.

We will provide a more detailed update on these matters around 10 December.

## Contact

### **Helen V. McGhee**

Associate

T +44 20 7655 1684

E [helen.mcghee@squirepb.com](mailto:helen.mcghee@squirepb.com)

---

The contents of this update are not intended to serve as legal advice related to individual situations or as legal opinions concerning such situations nor should they be considered a substitute for taking legal advice.

© Squire Patton Boggs.