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Lost at HMRC: Navigating the perils of property tax

Whether you're just starting out in the industry or more of a 'seasoned' pro, we all need to keep abreast of any changes to the raft of property taxes applied here in the UK. Here's legal eagle Kieran Soobadoo with a handy cut-out-and-keep guide to the new landscape of SDLT, ATED and available reliefs...

The March 2014 Budget saw the announcement of the latest in a series of government measures designed to disincentivise the ownership of high value residential property in tax-efficient corporate structures.

A premium 15% rate of stamp duty land tax was introduced for residential properties worth over £500,000 and it was revealed that the threshold for the annual tax already charged on properties worth over £2 million will be lowered over the next two years.

The new regime can be a legal minefield for investors and their advisors so it is important for them to be aware of what has changed and the traps they need to avoid.

Stamp Duty Land Tax

From 20th March 2014, any non-natural person (NNP) buying residential property worth over

£500,000 is required to pay stamp duty land tax (SOLT) at **15%** of the purchase price. An NNF can be a company, a partnership with a corporate member or a collective investment scheme. Previously, the threshold for the 15% rate was £2 million.

Consequently, the current rates of SDLT on residential property are as follows:

Price	SDLT Rate	
	Individuals	Non-natural persons
Up to £125,000	0%	0%
£125,001 - £250,000	1%	1%
£250,001 - £500,000	3%	3%
£500,001 - £1,000,000	4%	15%
£1,000,001 - £2,000,000	5%	15%
More than £2,000,000	7%	15%

Annual Tax on Enveloped Dwellings

The annual tax on enveloped dwellings (ATED) is a charge payable annually by "non-natural" owners of residential properties worth more than **£2 million**. This tax will be extended to properties worth more than £1 million from April 2015, and those worth more than £500,000 from April 2016.

The amount payable is determined in accordance with the number of days within each period from 1st April to 31st March that a qualifying property is owned by an NNP and no reliefs apply.

The tax must be paid within 30 days of the acquisition of a property, and again within 30 days of 1st April each year. If a relief is claimed so that the ATED charge is nil, the owner must still file a return every year in order to avoid a penalty.

ATED is charged at the following rates:

Property value	Annual chargeable amount
£500,000 - £1,000,000*	£3,500*
£1,000,001 - £2,000,000**	£7,000**
£2,000,001 - £5,000,000	£15,400
£5,000,001 - £10,000,000	£35,900
£10,000,001 - £20,000,000	£71,850
More than £20,000,000	£143,750

*From 1 April 2016

**From 1 April 2015

Reliefs

Various reliefs have been put in place so that the measures do not penalise genuine businesses carrying out commercial activity. These include:

- **Property development relief**, where the property is held in the course of a trade for the purpose of redeveloping and then either reselling or letting on a commercial basis.

- **Property rental relief**, where the property is let to a third party on commercial terms, or where steps are being taken to let the property without delay. This relief will not apply if the property is let to a connected person (e.g. a family member of the NNP's beneficial owner), even if a full rent is paid.

- **Property trading relief**, where the property is held by a NNP carrying on a business of buying and selling property on a commercial basis with a view to profit, and the interest in the property is held as the stock of the business for the sole purpose of resale.

These reliefs are not automatic – the owner will still need to complete a return after completion, and further returns each year.

The difference between the 15% rate of SDLT and the lower rate actually paid as a result of claiming a relief will be "clawed back" if the property acquired fails to be held exclusively for any one of the purposes mentioned above for a period of three years following completion.

Implications for UK property owners

The new annual tax on enveloped dwellings and the 15% rate of stamp duty land tax will affect anyone who holds or intends to hold interests in UK residential property through offshore companies and other corporate entities.

It may be possible to restructure existing arrangements to avoid the charges, however, care must be taken as the restructuring could itself have adverse tax implications: for example, transferring a property from an existing structure to an individual's direct ownership may trigger and inheritance tax liability. Beneficial owners will be forced to consider their own mortality – for those with a short life expectancy the impending inheritance tax charge may be greater than the ATED or SDLT.

One trap of which those wishing to “de-envelope” a property should be particularly wart is the SDLT charge that applies where a property is distributed to shareholders following the liquidation of a company. No charge will arise if the company is debt free and its only assert is the property. However, where there is a third-party loan secured on the property, any distribution from the company to the shareholders will attract SDLT.

Property owners will, therefore need to take a broad view and ensure they are properly advised before deciding how to react to the recent changes in the law.

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