

Tuesday 11 June 2013

PUBLIC BILL COMMITTEE

*New Amendments handed in are marked thus **

Amendments which will comply with the required notice period at their next appearance

FINANCE BILL

(Except Clauses 1, 3, 16, 183, 184 and 200 to 212; Schedules 3 and 41; any new Clauses, and any new Schedules, first appearing on the Order Paper not later than Tuesday 16 April 2013 and relating to tax measures concerning housing; and any new Clauses, and any new Schedules, relating to value added tax or the bank levy or air passenger duty or the subject matter of Clauses 1 and 16 and Schedule 3 or the subject matter of Clause 3 or the subject matter of Clauses 203 to 212 and Schedule 41)

NOTE

The Amendments have been arranged in accordance with the Order of the Committee [23 April 2013].

David Gauke

70

* Clause 107, page 63, line 8, at end insert—

‘(1A) This subsection provides for an exception to subsection (1).

Where P is an individual, C is not treated on the day in question as entitled to P’s single-dwelling interest unless on that day C is entitled to a single-dwelling interest in the dwelling that is a freehold or leasehold interest with a taxable value of more than £500,000.’

David Gauke

71

* Clause 107, page 63, line 36, at end insert—

‘(6) In the application of this section to Scotland—

(a) the reference to a freehold interest is to the interest of the owner;

(b) the reference to a leasehold interest is to a tenant’s right over or interest in property subject to a lease.’

Finance Bill, *continued*

David Gauke

72

- * Page **63**, line **37**, leave out Clause 108.
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David Gauke

73

- * Clause **109**, page **64**, line **7**, leave out from ‘interest’ to ‘section’ in line 11 and insert ‘if—
- (a) the day in question is relievable with respect to that interest by virtue of section 150 (providers of social housing),
 - (b) by virtue of section 148 (charitable companies) the ownership condition is regarded as not met with respect to the interest on that day, or
 - (c) the taxable value of the interest on that day is taken to be zero by virtue of’.
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David Gauke

74

- * Clause **114**, page **66**, line **33**, after ‘if’ insert ‘(a)’.

David Gauke

75

- * Clause **114**, page **66**, line **35**, at end insert ‘or
- (b) the ownership condition is, by virtue of section 148 (charitable companies), regarded as not being met on that day with respect to one or the other of those interests.’.

David Gauke

76

- * Clause **114**, page **67**, leave out line 2.
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David Gauke

77

- * Clause **115**, page **68**, line **1**, after ‘if’ insert ‘(a)’.

David Gauke

78

- * Clause **115**, page **68**, line **3**, at end insert ‘or
- (b) (in a case where paragraph (a) of subsection (2) applies) the ownership condition is, by virtue of section 148 (charitable companies), regarded as not being met on that day with respect to one or the other of the chargeable interests mentioned in that paragraph.’.

Finance Bill, *continued*

David Gauke

79

- * Clause 115, page 68, leave out line 15.
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David Gauke

80

- * Clause 130, page 76, leave out line 31.
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David Gauke

81

- * Clause 134, page 79, line 32, leave out subsection (2).
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David Gauke

82

- * Clause 148, page 88, line 35, leave out subsection (1) and insert—
 ‘(1) A charitable company that is entitled to a single-dwelling interest is regarded as not meeting the ownership condition with respect to the interest on any day on which the interest is held by the company for qualifying charitable purposes, other than an excluded day.’.

David Gauke

83

- * Clause 148, page 89, leave out lines 1 to 27 and insert—
 ‘(3) A day is an “excluded day” if the following conditions are met—
 (a) a person (“the donor”) has on or before that day made, or agreed to make, a gift to the charitable company or to a charity that is connected with it,
 (b) there exist on that day arrangements under which or as a result of which a linked individual is permitted, or is to be or may in the future be permitted, to occupy the dwelling, and
 (c) it is reasonable to assume from either or both of—
 (i) the likely effects of the gift and the arrangements, or
 (ii) the circumstances in which the gift was made and the circumstances in which the arrangements were entered into,
 that the gift would not have been made and the arrangements would not have been entered into independently of one another;
 but see the exception in subsection (5).
 (4) In subsection (3)(b) “linked individual” means an individual who—
 (a) is the donor, or
 (b) was, when the arrangements were entered into, an associate of the donor.
 (5) A day is not an “excluded day” if the first, second or third condition is met on that day.

Finance Bill, *continued*

The first condition is that the activities undertaken for carrying out the primary purposes of the charitable company include, or normally include, opening the dwelling to the public.

The second condition is that the dwelling is being exploited through commercial activities that involve, or normally involve, opening the dwelling to the public.

The third condition is that steps are being taken—

- (a) to secure that the first or second condition will be met without undue delay, or
- (b) to secure that the single-dwelling interest will be sold without undue delay.
- (6) In subsection (5)—
 - (a) “opening the dwelling to the public” means offering the public the opportunity to make use of, stay in or otherwise enjoy, on at least 28 days in any year, areas that constitute a significant part of the interior of the dwelling or of the dwelling’s garden or grounds;
 - (b) “without undue delay” means without delay, except so far as delay is justified by commercial considerations or for the sake of a primary purpose of the charitable company.
- (7) For the purposes of subsection (6)(a), the size (relative to the size of the whole dwelling or of the whole garden or grounds), nature, and function of the areas concerned are to be taken into account in determining whether they form a significant part of the interior of the dwelling or (as the case may be) of the garden or grounds.’.

David Gauke

84

- * Clause 148, page 89, line 28, leave out ‘(8)’ and insert ‘(3)(a)’.

David Gauke

85

- * Clause 148, page 89, line 30, leave out ‘charity’ and insert ‘charitable company’.

David Gauke

86

- * Clause 149, page 89, line 33, leave out ‘a substantial donor to a charitable company’ and insert ‘the donor’.

David Gauke

87

- * Clause 149, page 89, line 36, leave out ‘substantial’.

David Gauke

88

- * Clause 149, page 89, line 38, leave out ‘substantial’.

Finance Bill, *continued*

David Gauke

89

- * Clause 149, page 90, line 6, leave out subsection (4).

David Gauke

90

- * Clause 149, page 90, line 9, at end insert—

‘(5A) For the purposes of section 148(3)—

- (a) the making of a gift is disregarded if it is made before the day on which this Act is passed, and
- (b) an agreement to make a gift is disregarded if the agreement is made before that day.

(5B) Arrangements entered into before the day on which this Act is passed are disregarded for the purposes of section 148(3) unless a material alteration has been made to them on or after that date.

“Material alteration” means an alteration affecting anything in the arrangements that relates to the individual’s having (at any time), or potentially having, permission to occupy the dwelling.

(5C) References in section 148 and this section to a gift include the disposal of an asset for consideration of an amount or value which is less than the market value of the asset.

(5D) In section 148 and this section “arrangements” includes any scheme, arrangement or understanding of any kind, whether or not legally enforceable, involving a single transaction or two or more transactions.’.

David Gauke

91

- * Clause 149, page 90, line 10, leave out subsection (6).

David Gauke

That Clause 150 be transferred to page 88 line 33.

David Gauke

95

- * Schedule 31, page 393, line 17, leave out paragraph 2 and insert—

‘2 In this Part of this Act—

- (a) references to the delivery of an annual tax on enveloped dwellings return are to the delivery of a return that complies with all requirements imposed by or under any of sections 157 and 159 and paragraph 1;
- (b) references to the delivery of a return of the adjusted chargeable amount are to the delivery of a return that complies with all requirements imposed by or under any of sections 158 and 159 and paragraph 1.’.

Finance Bill, *continued*

David Gauke

96

- * Schedule 31, page 399, line 11, leave out ‘an annual tax on enveloped dwellings return’ and insert ‘a return of the adjusted chargeable amount’.

David Gauke

97

- * Schedule 31, page 400, line 29, leave out from ‘27’ to end of line 30 and insert “‘taxpayer’ means—
- (a) in relation to an assessment under paragraph 21, the chargeable person;
- (b) in relation to an assessment under paragraph 22, the person mentioned in paragraph 22(1).’.

David Gauke

98

- * Schedule 31, page 402, line 23, leave out ‘paragraph’ and insert ‘paragraphs 24 and’.

David Gauke

99

- * Schedule 31, page 415, line 34, after ‘157’ insert ‘or 158’.

David Gauke

100

- * Schedule 31, page 416, line 2, leave out ‘an annual tax on enveloped dwellings’ and insert ‘a’.
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David Gauke

92

- * Clause 161, page 95, line 39, leave out ‘103(3)’ and insert ‘97(3)’.
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David Gauke

101

- * Schedule 32, page 416, line 34, leave out ‘paragraph 28(2)’ and insert ‘paragraphs 28(2) and 31(3)’.

David Gauke

102

- * Schedule 32, page 417, line 19, after ‘return’ insert ‘or a return of the adjusted chargeable amount’.
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EXPLANATORY NOTE

CLAUSES 107, 108, 134, 161, 167, SCHEDULES 31, 32:

- INTERESTS HELD BY CONNECTED PERSONS**
- SECTION 107: SUPERIOR AND INFERIOR INTERESTS**
- MEANING OF “NON-QUALIFYING INDIVIDUAL” AND “QUALIFYING INDIVIDUAL”**
- PAYMENT OF TAX**
- ORDERS AND REGULATIONS**
- ANNUAL TAX ON ENVELOPED DWELLINGS: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS**
- ANNUAL TAX ON ENVELOPED DWELLINGS: INFORMATION AND ENFORCEMENT**

SUMMARY

1. Clauses 91 to 172 and Schedules 31 to 33 introduce a new tax called the annual tax on enveloped dwellings. This is chargeable on companies, collective investment schemes and partnerships with company members who hold UK residential dwellings valued at more than £2 million on specified valuation dates. The measure took effect from 1 April 2013. The annual tax is in most cases payable on or before 31 October 2013 for 2013/14, and on or before 30 April each year subsequently. If the payer is not chargeable for the full year, a repayment claim can be made. The clauses provide a number of reliefs against the tax for, amongst other things, residential dwellings that are leased out in a property rental business; held for sale in a property development or trading business; exploited in a trade of permitting the public to visit, stay in or otherwise enjoy the property; or provided for employees to use in the owner’s trade. There are also reliefs for charities and exemptions for public and national bodies and dwellings conditionally exempt from inheritance tax. Included within the Finance Bill were rules concerning situations where separate interests in a dwelling are owned by connected persons, one of whom is a person within the charge to ATED.

DETAILS OF THE AMENDMENTS

2. Clause 107 contains rules treating separate interests in a dwelling as a single interest where they are held by connected persons and one of

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those persons is within the charge to ATED. These rules are to ensure that the tax cannot be avoided by creating interests in the dwelling that are owned by connected persons so that there is no interest worth more than £2 million.

3. Amendment 70 (clause 107(1A)) inserts a new subsection after subsection (1) and before subsection (2). This subsection provides that where an interest in the dwelling is owned by a company (or a number of such interests are owned by companies) and the connected person is an individual the rules in clause 107 do not operate unless that interest has a value of greater than £500,000. This amendment provides similar rules to clause 108 but will cover a wider number of circumstances to those provided in clause 108. As such clause 108 is to be removed from the Bill.
4. Amendment 71 (clause 107(6)) provides clarification as to how the terms ‘freehold interest’ and leasehold interest’ used in clause 107 are to apply in Scotland.
5. Amendment 72 removes the original clause 108 as in its amended form its effect has been included in clause 107.
6. There are also a number of minor amendments set out below which, primarily, provide for increased clarity or to ensure that cross references are correctly stated.
7. Amendment 81 (clause 134) removes the subsection 134(2) as it is not necessary.
8. Amendment 92 (clause 161) amends the reference in subsection (2) so that it cross refers to the correct clause.
9. Amendments 93 and 94 (clause 167) amend subsection (3) so that clarity is given as to the clauses to which it applies and to ensure that the subsection (5) has effect on all instruments made under clause 154(1).
10. Amendment 95 (Schedule 31) replaces paragraph 2 with a new paragraph 2 to make the definitions of the expressions “delivery of an annual tax on enveloped dwellings return” and “delivery of a return of the adjusted chargeable amount” clear.
11. Amendment 96 (Schedule 31) amends paragraph 18 to ensure the correct return is referenced.
12. Amendment 97 (Schedule 31) amends paragraph 23 so as to ensure that the identification of the taxpayer for the purposes of paragraphs 24 to 27 is clearer.

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13. Amendment 98 (Schedule 31) amends paragraph 26 so that it applies for the purposes of both paragraph 24 and 25 rather than just paragraph 25.
14. Amendment 99 (Schedule 31) amends paragraph 56 so that the rules relating to the actions of responsible partners apply to both clause 157 (annual tax on enveloped dwellings return) and 158 (return of adjusted chargeable amount) rather than just clause 157.
15. Amendment 100 (Schedule 31) amends the definition of “filing date” so that it will apply to either an annual tax on enveloped dwellings return or a return of adjusted chargeable amount rather than just an annual tax on enveloped dwelling return.
16. Amendment 101 (Schedule 32) amends paragraph 3 to ensure that the amendments to Schedule 36 FA 2008 provide the correct definitions of a “notice of enquiry” so that it includes references to both paragraphs 28(2) and 31(3) of Schedule 31 of the Finance Bill and not just to paragraph 28(2).
17. Amendment 102 (Schedule 32) amends paragraph 4 so that it ensures that the rules set out apply equally to a return of the adjusted chargeable amount as to an annual tax on enveloped dwellings return.

BACKGROUND

18. At Budget 2012 it was announced that an ‘annual charge’ on residential property owned in structures where stamp duty land tax (‘SDLT’) may not be paid on a future sale was to be introduced. The ‘annual charge’ was to be consulted on over the summer with a response to that consultation and draft legislation available in the Autumn. Legislation was brought forward in Finance Bill 2013 to introduce the Annual Tax on Enveloped Dwellings.
19. These amendments provide that the rules in clause 107 only operate in appropriate circumstances. They provide wider exclusions from the rules than those provided by the Finance Bill as published. In consequence of these amendments clause 108 in the Finance Bill will not be passed into law.
20. Other minor amendments are also required to provide, primarily, increased clarity or to ensure that cross references are correctly stated.

EXPLANATORY NOTE

CLAUSES 109, 114, 115, 130, 148 & 149:

- DIFFERENT INTERESTS HELD IN THE SAME DWELLING: EFFECT OF RELIEFS ETC**
- DWELLING IN GROUNDS OF ANOTHER DWELLING**
- DWELLINGS IN THE SAME BUILDING**
- EFFECT OF RELIEFS UNDER SECTIONS 131 – 150**
- CHARITABLE COMPANIES**
- SECTION 148: SUPPLEMENTARY**

SUMMARY

1. Clauses 91 to 172 and Schedules 31 to 33 introduce a new tax called the annual tax on enveloped dwellings. This is chargeable on companies, collective investment schemes and partnerships with company members who hold UK dwellings valued at more than £2 million on specified valuation dates. The measure took effect from 1 April 2013. The annual tax is in most cases payable on or before 31 October 2013 for 2013/14, and on or before 30 April each year subsequently. If the payer is not chargeable for the full year, a repayment claim can be made. The clauses provide a number of reliefs against the tax for, amongst other things, dwellings that are leased out in a property rental business; held for sale in a property development or trading business; exploited in a trade of permitting the public to visit, stay in or otherwise enjoy the property; or provided for employees to use in the owner's trade. There are also reliefs for charities and exemptions for public and national bodies and dwellings conditionally exempt from inheritance tax. Included within the Finance Bill are rules concerning situations where separate interests in a dwelling are owned by connected persons, one of whom is a person within the charge to ATED.

DETAILS OF THE AMENDMENTS

2. Clause 148 is to be amended so as to provide for charitable companies to be exempt from ATED provided that there have been no arrangements entered into that provide for a donor or an associate of the donor to be permitted to occupy the property on terms that it is reasonable to consider exist as a result of the gift.

3. Amendment 73 (clause 109) amends clause 109 to draw the distinction between those provisions that are reliefs (clause 150 – providers of social housing) and those that are exemptions (clause 148 – charitable companies (which as part of the other amendments is be an exemption rather than a relief) and clause 153 – dwelling conditionally exempt from inheritance tax).
4. Amendments 74, 75 and 76 (clause 114) make amendments that are consequential on clause 148 (charitable companies) becoming an exemption instead of a relief.
5. Amendments 77, 78 and 79 (clause 115) make amendments that are consequential on clause 148 (charitable companies) becoming an exemption instead of a relief.
6. Amendment 80 (clause 130) removes charitable companies from this clause as it relates to reliefs only and the other amendments have changed the relief for charitable companies to being an exemption.
7. Amendment 82 (clause 148(1)) amends the subsection so that a charitable company is not treated as meeting the ownership condition when it holds the interest in the dwelling if it holds that interest for charitable purposes. However, where the conditions set out in subsection (3) are met then the day will be treated as an “excluded day” and tax will be charged.
8. Amendment 83 (clause 148(3)) sets out the conditions that lead to a particular day in a chargeable period being an “excluded day”. The conditions are that: “the donor” has made or agreed to make a gift to the charitable company, arrangements have been entered into whereby the donor or a person linked to them is permitted (or will be permitted) to occupy the dwelling, and it is reasonable to assume that the arrangements and the gift would not have been entered into independently of each other.
9. Amendment 83 (clause 148(4)) the new subsection (4) defines “linked individual”. A linked individual means either the donor or a person who was, when the arrangements were entered into, an associate of the person. An associate for the purposes of clause 148 is defined in clause 149.
10. Amendment 83 (clause 148(5)) provides exclusions from the “excluded day” rules where one of the three conditions set out in the subsection is met. Those three conditions are: that the primary purpose of the charitable company includes opening the dwelling to the public, that the dwelling is being exploited commercially by being opened to the public, or, the dwelling will be opened to the public or sold with undue delay.

11. Amendment 83 (clause 148(6)) defines “opening the dwelling to the public” and “without undue delay”.
12. Amendment 83 (Clause 148(7)) provides a definition of the meaning of a significant part of the interior of the dwelling or of the garden or grounds. Factors to be considered in establishing whether the condition is met are the size, nature and function of the parts made available to the public.
13. Amendments 84 and 85 (clause 148(9)) Amendment 11 updates a cross-reference in consequence of another amendment. Amendment 12 is consequential on another amendment and clarifies that “charity” in clause 148(9) refers to the charitable company.
14. Amendments 86, 87 and 88 (clause 149(1)) amend the subsection so that an associate is defined in relation to “the donor” rather than ‘the substantial donor’.
15. Amendment 89 removes the original subsection 149(4) as it is no longer necessary.
16. Amendment 90 (clause 149(5A)) provides that the making of a gift or the agreement to make the gift are disregarded if they were made or agreed before Finance Act 2013 was passed.
17. Amendment 90 (clause 149(5B)) provides that arrangements entered into before Finance Act 2013 was passed are not taken into account unless a material alteration has occurred after the passing of the Act. A material alteration is one which affects anything in the arrangements relating to the occupation of the dwelling by the donor or their associates.
18. Amendment 90 (clause 149(5C)) defines gift for the purposes of clause 148 so that it includes disposals at less than market value.
19. Amendment 90 (clause 149(5D)) defines arrangements for the purposes of clause 148.
20. Amendment 91 removes the original subsection 149(6) as it is no longer necessary.

BACKGROUND

21. At Budget 2012 it was announced that an ‘annual charge’ on residential property owned in structures where stamp duty land tax (‘SDLT’) may not be paid on a future sale was to be introduced. The ‘annual charge’ was to be consulted on over the summer with a response to that consultation and draft legislation available in the

Autumn. Legislation was brought forward in Finance Bill 2013 to introduce the Annual Tax on Enveloped Dwellings.

22. These amendments provide that the rules in clause 148 operate in a simpler manner than the previous rules. They provide that charitable companies will be exempt from ATED except in conditions where a donor has made a gift to the charitable company and arrangements have been entered into with respect to the occupation of the dwelling and the arrangements and gift would not have been made independently of one another.