Explanatory Note

Clause 56: Alternative property finance: land in Scotland

Summary

1. This measure makes a consequential change to the ATED legislation in relation to alternative property finance arrangements (Islamic finance) entered into between a financial institution and another person, whereby that institution purchases a property in Scotland on behalf of another person and leases it back to them. It is needed as a result of the introduction of the Scotland Act.

Details of the clause

2. Subsection (1) amends Part 3 of Finance Act 2013.

3. Subsections (2) to (6) make consequential amendments to section 157 of Finance Act 2013 so that it applies only to alternative property finance arrangements in respect of land in England, Wales or Northern Ireland.

4. Subsection (7) inserts new section 157A into Finance Act 2013 to apply ATED to alternative property finance arrangements in respect of land in Scotland.

5. New section 157A(1) to (3) set out the 2 conditions that must be met for new section 157A to apply.

   - Condition A is that there is an arrangement whereby a financial institution purchases a major interest in land in Scotland ("the first transaction"), grants to the other person ("the lessee") a leasehold interest out of that major interest ("the second transaction"), and enters into an agreement under which the lessee has a right to acquire from the institution the major interest purchased by them under the first transaction.

   - Condition B is that the major interest in land in Scotland purchased by the institution, consists of one or more dwellings, or part of a dwelling.

6. New section 157A(4) provides that where the lessee is a company, the interest held by the financial institution is treated as if it were held by the company, and that the interest granted out of the major interest is treated as if it had not occurred. The result is that the alternative property finance arrangement is ignored and the company is treated as owning the interest in the dwelling outright for the purposes of this part, i.e. the ATED charge arises on the

company and not on the financial institution.

7. New section 157A(5) provides that an alternative finance arrangement is in operation where the lessee holds the interest granted to it under the second transaction, and the financial institution holds the interest purchased under the first transaction.

8. New section 157A(6) provides that these rules also apply where the lessee is a partnership with a company member.

9. New section 156A(7) and (8) provides that these rules also apply where the lessee is a collective investment scheme.

10. New section 157A(9) defines "financial institution" as having the same meaning as that in section 71A of Finance Act 2003.

11. New section 157A(10) defines a "major interest in land" as ownership of land, or a tenant's right over or interest in land subject to a lease.

12. New section 157A(11) provides that where a lessee is as individual holding the interest for the purposes of a collective investment scheme and that lessee dies, references in new section 157(7) and (8) should be taken to mean the lessee's personal representative.

13. Subparagraph (8) provides that these changes have effect for chargeable periods on or after 1 April 2016.

Background note

14. The Annual Tax on Enveloped Dwellings (ATED) is an annual charge payable by companies, partnerships with a company member, and collective investment vehicles which own UK residential property valued at more than £1m (or more than £500,000 with effect from 1 April 2016).

15. Alternative property finance arrangements are used for property purchases to satisfy the requirements of Shari' law, which prohibits transactions which involve interest or unethical investments. For property transactions, these arrangements involve a financial institution purchasing the major interest in land and leasing it back to the individual (the lessee). The individual then has the right to acquire, at any time, the land from the institution.

16. There are special rules in relation to ATED so that where the lessee is a company, partnership with a company member or a collective investment scheme, ATED looks through the financial institution so that the charge instead falls on the lessee.

17. However, in relation to property in Scotland, the ATED legislation relies on the definition in section 72 of Finance Act 2003 (Stamp Duty Land Tax) which was repealed by the Scotland Act 2012. This change inserts consequential mirroring rules to ensure ATED continues to apply to alternative property finance arrangements in respect of property in Scotland.

18. If you have any questions about this change, or comments on the legislation, please contact Philippa Staples on 03000 585508 (email: stamptaxes.budget&financebill@hmrc.gsi.gov.uk).