

Clause 1: ATED: relief for certain housing co-operatives

Summary

1. This clause introduces a new relief from the Annual Tax on Enveloped Dwellings (ATED) to apply where an interest valued in excess of £500,000 is held in UK residential property exclusively by non-publicly funded, non-social housing co-operatives which have no transferable share capital.

Details of the clause

2. Subsection 1 inserts new subsection 3A into section 150 of the Finance Act 2013 (providers of social housing) to provide that relief from ATED is available on any day on which a qualifying housing co-operative is entitled to an interest in UK residential property. It makes a consequential amendment to the heading of section 150.
3. Subsection 2 inserts a new section 150A into the Finance Act 2013, which defines a “qualifying housing co-operative”.
4. New section 150A(1) provides that “qualifying housing co-operative” is one which falls within the meaning of the Housing Association Act 1985 or Part 2 of the Housing (Northern Ireland) Order 1992 and is a registered society within the meaning of the Co-operative and Community Benefits Societies Act 2014 or the Co-operative and Community Benefits Society Act (Northern Ireland) 1969.
5. New section 150A(2) provides that the rules of the association must:
 - Restrict membership of the association to individuals who are tenants or prospective tenants of the property;
 - Prevent the granting or assignment of tenancies to individuals other than members of the association;
 - Prevent members from transferring their membership (i.e. transferring their share capital);
 - Give members equal voting rights, and
 - Not grant members any other rights or interests in the association apart from a return of their share capital of a nominal value.
6. Subsection 3 provides that these changes come into effect for chargeable periods beginning on or after 1 April 2020.

Background note

7. ATED is charged where a company, a partnership with at least one company member, or a collective investment scheme owns UK residential property (a single-dwelling interest) valued at more than more than £500,000. The amount of tax charged is calculated using a banding system based on the value of the property. There are a number of reliefs available which must be claimed by filing an ATED return. Reliefs can reduce the annual charge in part, or in whole to nil.
8. The 15% rate of Stamp Duty Land Tax (SDLT), which operates alongside ATED, is similarly charged where a company, partnership, or a collective investment scheme purchases UK residential property valued in excess of £500,000. The rules for both ATED and 15% rate of SDLT largely mirror one another, except to the extent that one is a one-off transaction tax; the other an ongoing annual charge.
9. ATED and the 15% rate of SDLT were introduced to deter the practice of buying and owning residential property within a corporate wrapper, a practice often described as 'enveloping'. Enveloping creates a situation in which effective ownership of a property can continually change hands, not via the sale of the property itself, which would give rise to SDLT, but instead via the sale/transfer of the shares in the company. No SDLT is payable on share transactions.
10. Housing co-operatives are voluntary associations of members who use a corporate structure (a company) to provide housing to their members. Whereas ordinary companies are registered under the Companies Acts with Companies House. Housing co-operatives are registered and regulated by the Financial Conduct Authority.
11. Currently, any housing co-operative that owns residential property valued in excess of £500,000 is within the scope of ATED. Housing co-operatives which are registered providers of social housing already qualify for relief. This measure introduces new legislation to provide relief for housing co-operatives which are non-publicly funded, non-social housing co-operatives and which have no transferable share capital. The absence of transferable share capital eliminates the potential avoidance of SDLT which ATED was designed to counter.
12. A corresponding relief is also introduced in relation to the 15% flat rate of SDLT.
13. If you have any questions about this change, or comments on the legislation, please contact email: ated.technicalqueries@hmrc.gov.uk.

Clause 2: SDLT: relief from higher rate charge for certain housing co-operatives

Summary

1. This clause introduces a new relief from the 15% higher rate of Stamp Duty Land Tax (SDLT) where the purchase of a residential property valued in excess of £500,000 is made by a company which is a housing co-operative that has no transferable share capital.

Details of the clause

2. Subsection 1 inserts new paragraph 5FA into Schedule 4A to the Finance Act 2003 (stamp duty land tax: higher rate for certain transactions). New paragraph 5FA provides for a relief from the 15% higher rate of SDLT where a residential property is purchased by a qualifying housing co-operative for the purposes of section 150(3A) of the Finance Act 2013 (relief from ATED for housing co-operatives).
3. Subsection 2 inserts new paragraph 5L into Schedule 4A to the Finance Act 2003. New paragraph 5L sets out the rules under which relief is to be withdrawn.
4. New paragraphs 5L(1) and 5L(2) provide that the relief which has been allowed under new paragraph 5FA is to be withdrawn if on any day in a period of three years from the date of purchase (the 3-year “control period”), the purchaser is not a qualifying housing co-operative and immediately before that day still owned the property (or an interest in it).
5. New paragraphs 5L(3) to 5L(5) provide that where the purchaser is no longer a qualifying housing co-operative because it ceases to exist, relief will be withdrawn only where immediately before the day of succession the purchaser still owned the property and one of the following applies:
 - A successor (“the first successor”) that has succeeded to the engagements of the qualifying housing co-operative, is not itself a qualifying housing co-operative.
 - The first successor is a qualifying housing co-operative on the day of succession but later ceases to be so during the remainder of the 3-year control period, and immediately before that day the first successor still owned the property.
6. New paragraphs 5L(6) and (7) extend the rules concerning a first successor to cover situations where there are further successors. Where there is further succession, these new paragraphs provide for the rules to apply as if the first successor was the purchaser and the subsequent successor was the first successor, and so on down any

chain of succession.

7. Subsection 3 refers to consequential changes to the Finance Act 2003 that are necessary as a result of the introduction of new paragraphs 5FA and 5L referred to above.
8. Subsection 4 amends Section 81 of the Finance Act 2003 to provide that where relief is withdrawn under new paragraph 5L (and so more tax is payable) a further return must be made within 30 days of the day on which the purchaser ceases to be a qualifying housing co-operative. It further provides that where, during the 3-year control period, a qualifying housing co-operative no longer exists because a successor has succeeded to its engagements, a further return must be made by the successor within 30 days of the first day on which the successor is not a qualifying housing co-operative.
9. Subsection 5 inserts new subsections 2A and 2B into section 85 of the Finance Act 2003 (liability to tax). New subsections 2A and 2B provide that where relief is withdrawn because a successor, who is not a qualifying housing co-operative, has succeeded to the engagements of the purchaser, it is that successor who is liable to pay the additional tax.
10. Subsection 6 amends section 86 of the Finance Act 2003 (payment of tax) to extend the existing rules for the time in which tax is payable as the result of the withdrawal of relief, to similarly cover situations where relief is withdrawn under new paragraph 5L.
11. Subsection 7 amends section 87 of Finance Act 2003 (interest on unpaid tax) so that the requirement to pay interest on tax remaining unpaid as a result of the withdrawal of relief, applies similarly where relief is withdrawn under new paragraph 5L.
12. Subsection 8 makes a consequential amendment to Schedule 4A of Finance Act 2003 as a result of new paragraph 5L.
13. Subsection 9 brings the new relief into effect for land transactions where the effective date of is on or after [Autumn Budget day 2020] or a later date.

Background note

14. The 15% flat rate of SDLT is charged where a company, a partnership with at least one company member, or a collective investment scheme purchases UK residential property (a single-dwelling interest) valued in excess of £500,000. There are a number of reliefs available where the property is to be used for a particular purpose.
15. The Annual Tax on Enveloped Dwellings (ATED), which operates alongside the 15% rate of SDLT, is similarly charged where a company, a partnership with at least one company member, or a collective investment scheme owns UK residential property (a single-dwelling interest) valued in excess of £500,000. The rules for both 15% and ATED largely mirror one another, except to the extent that one is a one-off transaction tax; the other an ongoing annual charge.
16. The 15% rate of SDLT and ATED were introduced to deter the practice of buying and

owning residential property within a corporate wrapper, a practice often described as 'enveloping'. Enveloping creates a situation in which effective ownership of a property can continually change hands, not via the sale of the property itself, which would give rise to SDLT, but instead via the sale/transfer of the shares in the company. No SDLT is payable on share transactions.

17. Housing co-operatives are voluntary associations of members who use a corporate structure (a company) to provide housing to their members. Whereas ordinary companies are registered under the Companies Acts with Companies House, Housing co-operatives are registered and regulated by the Financial Conduct Authority.
18. Currently, any housing co-operative that purchases residential property valued in excess of £500,000 is chargeable to the 15% rate of SDLT. This measure introduces new legislation to provide relief for housing co-operatives which are non-publicly funded, non-social housing co-operatives and which have no transferable share capital. The absence of transferable share capital eliminates the potential avoidance of SDLT.
19. If, during the 3-year period (the control period) following the purchase of the property the housing co-operative, or a successor to the engagements of the housing co-operative, no longer meets the conditions, relief is withdrawn.
20. A corresponding relief is also introduced in relation to the Annual Tax on Enveloped Dwellings.
21. If you have any questions about this change, or comments on the legislation, please contact email: ated.technicalqueries@hmrc.gov.uk.