

## THE CHARGE TO ATED

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1. The annual tax on enveloped dwellings is contained in Part 3 FA 2013. Perhaps predictably, a charge which only affected properties with values in excess of £2 million when introduced has been significantly widened in scope and from 1 April 2016 will cover all properties with a value in excess of £500,000.
2. The following is an overview of the main provisions giving rise to the charge to ATED. It goes without saying that it is no substitute for a detailed consideration of the relevant statutory provisions.

### **Ownership by a Relevant Entity**

3. The relevant entities whose ownership will give rise to a charge are:
  - 3.1 A company (section 94(4) FA 2013);
  - 3.2 A partnership of which a company is a partner (section 94(5) FA 2013); and
  - 3.3 A collective investment scheme (section 94(6) FA 2013).
4. These are different from the chargeable persons referred to in the legislation which broadly means the persons who are liable to pay the ATED charge.
5. Ownership in this context means being beneficially entitled to an interest in the property whether solely or jointly with another person (section 95(1) FA 2013).

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*Exclusion of interest under settlements*

6. Ownership as a trustee or as a beneficiary under a settlement is excluded (section 95(2) FA 2013). For these purposes a settlement means a trust other than a bare trust (para 1 Schedule 16 FA 2003).

*Charitable companies (section 151 FA 2013)*

7. An interest held by a charitable company for use in the furtherance of its charitable purposes will generally be treated as not meeting the ownership condition. There are exclusions which can apply where a gift to the charity has been made on terms that rights are retained in relation to the property.

*Public bodies etc. (sections 153 to 154 FA 2013)*

8. Public bodies, certain bodies established for national purposes and are treated as not being companies for purposes of ATED.

**Single Dwelling Interest**

9. The definition of chargeable interest (section 107 FA 2013) largely follows that from SDLT. It means an estate, interest, right or power over land in the UK and the benefit of any obligation, restriction or condition affecting such. Security interests (e.g. mortgages) licences and tenancies at will are excluded.
10. A single dwelling interest is a chargeable interest over land consisting of a single dwelling. This is determined on a day to day basis.

*Dwelling (section 112 FA 2013)*

11. ATED provides a definition of dwelling which is similar but subtly different to that which appears elsewhere in the tax code (see for example multiple dwellings relief and the Non-Resident CGT charge).
12. Broadly, a building is a dwelling if it is either used or suitable for use as a dwelling or it is in the process of being constructed or adapted for such use. It includes land intended to be occupied or enjoyed with the dwelling and land which subsists for the benefit of the dwelling.
13. There are certain specific exceptions found in section 116(2) and (3) FA 2003 (e.g. student accommodation, hospices and prisons).

*Temporary unsuitability (section 131 FA 2013)*

14. Temporary unsuitability for use of a dwelling and/or suitability for any other use is disregarded save in certain specified circumstances.
15. Where damage is accidental or otherwise caused by events beyond the control of the person entitled to the single dwelling interest and has the consequence that the building is unsuitable for use as a dwelling for at least 90 consecutive days the period of unsuitability is taken into account in determining whether the property is a dwelling notwithstanding any work to restore the building.

*Dwelling within dwellings (sections 115 and 116 FA 2013)*

16. Suitability for use as a dwelling does not preclude a part of a building from being part of a larger dwelling (section 115 FA 2013).
17. Where two separately occupied dwellings are on the same grounds but different buildings and share the same access, then if they are both owned by the same relevant entity (or persons connected with it) they are treated as a single dwelling unless relief is available in respect of one of them (section 116 FA 2013).

*Linked dwellings (section 117 to 119 FA 2013)*

18. Two dwellings which have private access between them and are not used or suitable for use as a single dwelling owned by the same relevant entity (or persons connected with it) are treated as a single dwelling unless relief is available in respect of one of them.

*Off plan purchases (section 113 FA 2013)*

19. Substantial performance of a contract for purchase of land with a building to be constructed is treated as the acquisition of a dwelling.

*Demolition of dwelling (section 126 to 129 FA 2013)*

20. The demolition of a dwelling will not of itself cause the ATED charge to cease to apply (section 126 FA 2013). It will be necessary for the person entitled to the interest to notify HMRC that to the best of that person's knowledge and belief there is no proposal to construct any dwelling on the site of the old dwelling (section 127 FA 2013). If that notification is made, the dwelling is treated as having ceased to be one as from the date on

which demolition has begun and the building is no longer suitable for use as a dwelling.

21. Where there is a replacement, it is assumed that the old dwelling continued to exist right up to the date of completion (for council tax purposes) or first occupation of earlier of the replacement.

*Conversion for non-dwelling use (section 130 FA 2013)*

22. Conversion for non-dwelling use will be disregarded in the absence of planning permission.

Whether this in fact makes the building unsuitable for use is stated to be a question of fact.

***The relevant interest in the dwelling***

*Multiple dwellings*

23. Where a person has chargeable interests in two or more dwellings then that person is treated as having a single dwelling interest in each of the dwellings (section 108(3) FA 2013).
24. A single dwelling interest in one dwelling is distinct from any single dwelling interest in another dwelling (section 108(6) FA 2013).

*Non-residential land*

25. An interest in land that is not a dwelling or part of a dwelling is excluded from a single dwelling interest (section 108(4) FA 2013).

*Different interests in a single dwelling (section 109 FA 2013)*

26. Where a company holds more than one chargeable interest in a dwelling they are treated as one single dwelling interest with a value equal to their cumulative values.

***Interests held by connected persons (section 110 FA 2013)***

27. Where a company is entitled to a single dwelling interest and a connected person is entitled to a single dwelling interest in the same property, then the company is treated as being entitled to both single dwelling interests.

28. This applies to each company if there are two connected companies holding interests. They are treated as jointly liable but there is no double charge to tax (sections 97 and 104 FA 2013).
29. Where the connected person is an individual, that individual's interest is not added to that of the company unless the freehold or leasehold interest of the company has a value of more than £250,000.
30. Where the value of the company's interest is more than £250,000 but less than £500,000 and the effect of cumulation is to give the company an interest valued at more than £2 million, the individual's interest will not be cumulated with that of the company.
31. There is similar provision for collective investment schemes without the exclusion for interests held by individuals.
32. There is provision for extension of reliefs to both interests where they are (i) a freehold or leasehold interest and (ii) a leasehold interest out of which no leasehold interest has been granted to a connected person (section 111 FA 2013).

### **Chargeable Period**

33. The chargeable period is the period of 12 months beginning on 1 April (section 94(8) FA 2013).

### **Taxable Value**

#### *Date of valuation*

34. The charge is determined by reference to the value on the "relevant day", which is either (section 99 FA 2013):
  - 34.1 The first days of the chargeable period (if the charge applies); or
  - 34.2 The first day in the chargeable period on which the charge applies.

#### *The valuation date*

35. Counterintuitively, the value of the property on the relevant day is not its value on that actual day, but rather is the market value of the interest on

the latest valuation date which falls before the relevant day (section 102 FA 2013).

*Five year anniversaries of 1 April 2012*

36. Valuation dates occur on each 5 year anniversary of 1 April 2012.
37. Where the beginning of a chargeable period and a 5 year anniversary valuation date coincide, it is the valuation from the previous valuation date which applies for that chargeable period (i.e. for the chargeable period beginning 1 April 2022 the valuation date will be 1 April 2017 and not 1 April 2022) (section 102(2A) FA 2013).

*Acquisition or disposal*

38. They also occur on the effective date of:
  - 38.1 any substantial acquisition of a chargeable interest in or over the dwelling and/or
  - 38.2 any substantial disposal of part (but not the whole) of the single dwelling interest.
39. A disposal or acquisition will not be substantial if the chargeable consideration for that and any linked transaction is less than £40,000. For these purposes deemed market value rule applies for transactions between connected persons (section 103 FA 2013).

*New dwellings (section 124 FA 2013)*

40. The valuation day for a new dwelling is the earlier of the completion day for council tax purposes and the day of first occupation. A new dwelling for these purposes is one which had been constructed (including by alteration of another building) but not one which has been produced from another dwelling or which is replacing a demolished building.

*Dwelling produced from other dwellings (section 125 FA 2013)*

41. Where a dwelling is converted into a different dwelling or dwellings it is assumed that the old dwelling ceases to exist and the new dwelling commences existence only when conversion is completed. The following day is the valuation date.

*Demolition and replacement (section 128 FA 2013)*

42. Where a dwelling is demolished and replaced with a new dwelling or dwellings it is assumed that the old dwelling ceases to exist and the new dwelling commences existence only when conversion is completed. The following day is the valuation date.

*Acquisitions and disposals*

43. Acquisition is defined to include any acquisition however effected. Surrenders and variations of chargeable interests are expressly deemed to be acquisitions of chargeable interests with a corresponding disposal (section 120 FA 2013).
44. Acquisition and disposal are taken to take place on the effective date of the transaction. The transaction is deemed to have taken place as from that effective date (section 171 FA 2013) which is given a meaning very similar to that for SDLT purposes (sections 122 and 123 FA 2013). This will include the date of substantial performance of the contract which is defined in line with section 44 FA 2003.

*Dwelling conditionally exempt from IHT*

45. Where a dwelling is conditionally exempt from IHT and meets certain conditions it will be treated as having a zero value.

**Liability to Pay the Charge**

46. Liability falls on the company, the members of the partnership on the first day of the chargeable period and, subject to the nature of the collective investment scheme the person with day to day control over the management (section 96 FA 2013). Persons liable to the charge are referred to as chargeable persons.
47. Persons owning an interest in the property jointly with a company or partnership on the first day of a chargeable period are made jointly and severally liable for the tax (section 97 FA 2013). Similarly, the major participants in a collective investment scheme are jointly and severally liable up to the market value of their holding in the scheme (section 98 FA 2013).

### Amount of charge

48. The annual chargeable amount for 2016/17 is determined by reference to bands as follows:

Annual chargeable amount	Taxable value of the interest on the relevant day	Effective rates of charge
£3,500	More than £500,000 but not more than £1 million	0.7% - 0.35%
£7,000	More than £1 million but not more than £2 million	0.7% - 0.35%
£23,350	More than £2 million but not more than £5 million	1.17% - 0.47%
£54,450	More than £5 million but not more than £10 million	1.09% - 0.54%
£109,050	More than £10 million but not more than £20 million	1.1% - 0.55%
£218,200	More than £20 million Maximum	maximum of 1.09%

### Available reductions in charge

Reduction where not within charge at the beginning of the chargeable period

49. Where the charge did not apply at the start of a chargeable period, there is a proportional reduction so much of the chargeable period as elapsed before the first day on which the charge applied (section 99(3) FA 2013).

### Adjustment of amount charged (sections 105 and 106)

50. The amount of charge is adjusted on a claim being made where the charge would be less by reference to the number of actual days in the period in which a person would be liable to tax. This adjusted chargeable amount takes account of both reliefs and circumstances pursuant to which the situation falls outside the charge to ATED.

***Interim relief (section 100 FA 2013)***

51. Relief from charge can be claimed before the end of the chargeable period if during one or more days in that period the charge does not apply by reason of a relief, the value of the interest or the chargeable person not being within the charge to ATED. As from the date of the claim any liability to tax will be reduced to reflect days on which the charge does not apply.

**Reliefs from Charge (Sections 132 to 150 FA 2013)**

52. The adjusted chargeable amount is to be calculated as if the chargeable person is not within the charge on any day in relation to which a relief applies. This has the effect that there is a proportional reduction for each day of the chargeable period in which a relief applies.

***Property rental business (section 133 FA 2013)***

53. A day is relievable if the interest is being exploited as a source of rents or other receipts or steps are being taken to ensure it will be so exploited without undue delay (i.e. justified by commercial reasons or unavoidable). The business must be run on a commercial basis with a view to a profit.
54. This does not apply to rents which are excluded rents (rents for electric-line wayleaves, pipelines for gas or oil, phone masts or wind turbines) (section 605 CTA 2010).
55. An exception to this is where a non-qualifying individual is permitted to occupy the dwelling.

***Occupation by non-qualifying individual (section 135 and 136 FA 2013)***

56. A non-qualifying individual is:
- 56.1 an individual who is entitled to the interest (otherwise than as a member of a partnership),
  - 56.2 an individual (“a connected person”) who is connected with a person entitled to the interest,
  - 56.3 if a person is entitled to the interest as a member of a partnership, an individual who is, or is connected with, a qualifying member of that partnership (one entitled to 50% of the income or assets of the partnership),

- 56.4 an individual (“a relevant settlor”) who is the settlor in relation to a settlement of which a trustee is (in the capacity of trustee) connected with a person who is entitled to the interest,
  - 56.5 the spouse or civil partner of a connected person or of a relevant settlor,
  - 56.6 a relative of a connected person or of a relevant settlor, or the spouse or civil partner of a relative of a connected person or of a relevant settlor,
  - 56.7 a relative of the spouse or civil partner of a connected person or of a relevant settlor, 56.8 the spouse or civil partner of a person falling within paragraph .7 above, or
  - 56.9 an individual who is a major participant in a relevant collective investment scheme or is connected with a major participant in a relevant collective investment scheme.
57. Where there is occupation by a non-qualifying individual, in addition to excluding that occupation, no earlier day in that or the preceding chargeable period and no subsequent day in that chargeable period or the following three years in which the property is not actually being exploited as a source of rents (i.e. steps are being taken to do so) will qualify for relief unless the property is in fact exploited as a source of rents in that period.

*Preparation for sale, demolition etc. of rental property (section 134 FA 2013)*

58. Where a property has qualified for relief by reason of being used for a property rental business subsequent days where the property is unoccupied will be relievable if throughout that period:
- 58.1 Steps are being taken to sell the property without undue delay;
  - 58.2 Steps are being taken to demolish the building without undue delay and any replacement will be used in a relievable way;
  - 58.3 Steps are being taken to convert the dwelling into a different dwelling without undue delay and the new dwelling will be used in a relievable way;
  - 58.4 Steps are being taken to convert the dwelling into a building that is not a dwelling without undue delay.
59. Subsequent occupation by a non-qualifying person will cause this relief to cease to apply for that of the preceding chargeable period.

*Dwellings open to the public (section 137 FA 2013)*

60. A day on which the dwelling is exploited as a source of income in the course of a qualifying trade (in the normal course of which the public are allowed to use the dwelling as customers of the trade for at least 28 days a year) will be relievable. Similarly where steps are being taken to exploit the dwelling in such a way without undue delay.

*Property developers (section 138 FA 2013)*

61. Where an interest is held exclusively for developing and reselling land as part of a property development trade it qualifies for relief and any additional purpose of exploiting the property as a source of rents is disregarded.
62. Relief is, however, limited where there is occupation by a non-qualifying individual (section 140 FA 2013).

*Property developers: exchange of dwellings (section 139 FA 2013)*

63. An interest in a dwelling acquired by way of exchange in the course of a property development business qualifies for relief unless the property is occupied by a non-qualifying individual.

*Property traders (section 140 FA 2013)*

64. Where the interest is stock of a property trading business it will be relievable unless it is occupied by a non-qualifying individual. Occupation by a non-qualifying individual restricts relief for the following three years.

*Financial institutions acquiring dwellings in the course of lending (section 143 FA 2013)*

65. Ownership by a financial institution carrying on a business that involves lending of money qualifies for relief unless there is occupation by a non-qualifying individual.

*Occupation by certain employees or partners (section 145 FA 2013)*

66. Where an employer carries on a trade on a commercial basis with a view to profit and the dwelling is held to make it available to employees or partners, then occupation by an employee and/or partner will qualify for

relief provided that employee or partner has less than a 10% interest in the employer.

*Farmhouses (section 148 FA 2013)*

67. Relief is available in respect of a farmhouse which forms part of land occupied for the purposes of a farming trade and a person carrying on that trade is entitled to or connected with a person entitled to the interest in the farmhouse. The farmhouse must be occupied by a farm worker, a former long serving farm worker or the surviving spouse of a farm worker.

*Providers of social housing (section 150 FA 2013)*

68. Relief is available where the interest is held by a profit making registered provider of social housing and the interest was acquired with the assistance of public subsidy.
69. Similarly if the register provider is not profit making and is controlled by its tenants, acquired from a relevant housing provider or acquired with a public subsidy.