

# Annual Tax on Enveloped Dwellings – Technical Guidance

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## Overview

Most residential properties (dwellings) are owned directly by individuals. But in some cases a dwelling may be owned by a company (or other collective investment vehicle). In these circumstances the dwelling is said to be 'enveloped' because the ownership sits within a corporate 'wrapper' or 'envelope'.

The Annual Tax on Enveloped Dwellings (ATED) is a tax charged on 'non-natural persons' (a company, a partnership with a company member, or a collective investment scheme) which hold an interest in one or more UK residential dwelling(s) known as (a 'single-dwelling interest') and where that single dwelling interest is worth more than £2 million. It will not apply where an individual alone, or with other individuals, owns a residential property.

ATED is an annual tax and is charged in respect of 'chargeable periods' running from 1 April to 31 March. The first chargeable period is 1 April 2013 to 31 March 2014. Special rules concerning the filing of returns for this chargeable period can be found at [paragraph 54](#) of this guidance. Where a person owns a single-dwelling interest for a shorter period then its chargeable period will be 1 April to the date it no longer owns the interest (for example 1 April 2015 - 28 January 2016). Furthermore, where a liability arises in only part of the year then only a proportion of the annual amount payable will need to be paid.

For a liability to pay ATED to arise a potential taxpayer will need to answer 'yes' to all of the following:

- Do you meet the ownership condition (see [paragraph 1.4](#) of this guidance)?
- Are you beneficially entitled, either alone or with others, to a single-dwelling interest (see [paragraph 2](#) and [paragraph 15](#) of this guidance)?
- Does that single dwelling interest have a value of greater than £2 million on the latest valuation date (broadly 1 April 2012 or such subsequent dates as defined - see [paragraph 9](#) of this guidance).
- Do none of the exemptions apply to you (see [paragraphs 42 to 45](#)).
- Are you unable to claim a relief (see [paragraph 30.2](#) of this guidance for a list)?

Generally, the amount of tax due depends on the value of the single-dwelling interest in question at certain fixed valuation points. In certain situations, however, the values of different interests in the same dwelling or of separate dwellings may be aggregated when determining the liability to ATED. Specific provision is made in the legislation to determine when a single-dwelling interest must be valued to determine any liability to ATED.

Reliefs (see [paragraph 30.2](#) of this guidance for a list) are available in some cases where the conditions for liability are otherwise met. Where relief is available, it **must** be claimed by the taxpayer in a return. In some very specific cases there are exemptions from the tax.

The amount of ATED is based on the band into which your dwelling falls (see [paragraph 6.2](#) of this guidance). If your dwelling is worth less than £2 million on 1 April 2012 (or later if you acquired it after that date) then you are outside the scope of ATED. If this is the case then you will not need to make any ATED returns. However, another revaluation date will occur on 1 April 2017 (and 5 years thereafter) when you will need to re-consider the value of your dwelling to see if you are within the scope of the charge from 1 April 2018 onwards. Other valuation dates between these fixed 5 year valuation dates can occur, for example if you increase the value of your dwelling through a land transaction (for example you acquire more land or extend a lease). Other than at the 5 year fixed valuation date, a single-dwelling interest will not need to be re-valued as a result of improvements to the dwelling such as extensions or redecoration) or movements in the value as a result of market fluctuations.

Please also visit HMRC's website to see further information regarding ATED.

### [Annual Tax on Enveloped Dwellings](#)

The following are examples of common situations and are to give users of this guidance a quick understanding of how ATED impacts on certain situations and is for illustrative purposes only. The effect of the legislation in individual cases depends on the facts relating to that taxpayer.

- **Example one:** Mr Z owns the beneficial interest in a dwelling worth £4 million. As Mr Z does not meet the ownership condition he is outside the scope of ATED and is under no obligation to (and should not) send in returns.
- **Example two:** B Ltd is acting as a bare trustee for Mr Y and it holds the legal title to a dwelling worth £15 million. The beneficial interest in the dwelling is held by Mr Y personally. Despite B Ltd owning the legal title to the dwelling it does not own the beneficial interest. B Ltd does not therefore meet the ownership condition and is under no obligation to (and should not) send in returns.
- **Example three:** C Ltd and D Ltd are trustees of a settlement trust (for example a discretionary trust). A dwelling worth £25 million was settled into the trust. Whilst C Ltd and D Ltd hold the beneficial interest in the property as trustees they are not under an obligation to (and should not) send in returns. This is because trustees holding the interest in their capacity as trustees of a settlement are outside the ownership condition rules.
- **Example four:** E Ltd owns the beneficial interest in a dwelling worth £6 million. It meets the ownership condition as it is beneficially entitled to the single dwelling interest. The dwelling is worth more than £2 million at the latest valuation date. It does not meet any of the conditions for the exemptions to apply. However, it does meet the conditions for one of the reliefs. E Ltd will not have a liability to pay ATED so long as it continues to meet the relief conditions but it will be under an obligation to (and must) send in returns to claim the relevant relief.
- **Example five:** F Ltd owns the beneficial interest in a dwelling worth £7 million. It will be in the scope of the tax for the reasons set out in example four above. However, in this case it cannot claim a relief as it has permitted a non-qualifying individual (see [paragraph 33](#) of this guidance) to occupy the

dwelling. F Ltd is under an obligation to make ATED returns and it will also have an ATED liability to pay.

- **Example six:** G Ltd owns the beneficial interest in a dwelling worth £3 million. Its issued share capital is owned by Mr W and Mr X who own the shares as trustees of a settlement trust. The dwelling is occupied by Ms V a beneficiary of the trust. Even though the shares are owned by the trustees of a settlement (persons outside the scope of the tax) G Ltd owns the interest and therefore it meets the ownership condition. G Ltd must therefore make returns and as the dwelling is occupied by a non-qualifying individual must also pay ATED.

The legislation relating to ATED is to be found in sections 94 to 174 Finance Act 2013 (including Schedules 33, 34 and 35 of that Act).

Please note that all examples use calculated amounts for illustrative purposes only. The annual amounts of ATED may be different from those used in the examples due to the indexation of the initial amounts set in FA 2013. Similarly, any revaluation in 2017 or later years is not a part of the examples.

## The charge to tax

### **1 The charge to tax FA13/S94**

1.1 ATED is charged in respect of a chargeable interest where on one or more days in a chargeable period

- it is a single dwelling interest
- the taxable value of the interest is more than £2 million, and
- the ownership condition is met

1.2 A chargeable interest is, broadly, an interest in or over land in the United Kingdom (see [paragraph 14](#) of this guidance for more detail).

1.3 A chargeable period is:

- 1 April 2013 to 31 March 2014 (inclusive)
- each subsequent period of 12 months beginning with 1 April

1.4 The ownership condition will be met, and ATED will be charged, only if the single-dwelling interest is held:

- by a company (otherwise than as a member of a partnership or for the purposes of a collective investment scheme)
- by a company which is a member of a partnership, or
- for the purposes of a collective investment scheme

1.5 Where a company is beneficially entitled to a single-dwelling interest jointly with others (who may not fall within one of these categories), the ownership condition will be treated as met in respect of the whole interest. It does not matter whether

the company is entitled as a joint tenant or tenant in common (or, in Scotland, as a joint owner or owner in common).

1.6 For the purposes of the ownership condition it is immaterial whether the company, partnership or collective investment scheme is incorporated or resident in the United Kingdom. So, for example, a company that is not incorporated or resident in the UK but which owns land in the UK that constitutes a 'single-dwelling interest' is subject to ATED provisions and is required to make returns.

## **2 Entitlement to interests FA13/S95**

2.1 For ATED purposes, 'entitled' means beneficially entitled

- whether solely or jointly with another person, and
- whether as a member of a partnership or otherwise (except where otherwise specified)

2.2 However the term excludes

- entitlement in the capacity of a trustee or personal representative, or
- entitlement as a beneficiary under a settlement

2.3 'Settlement' has the same meaning as in Part 4 of FA 2003 – that is, a settlement which is not a bare trust or nomineehip (see paragraph 1 of Schedule 16 to that Act and SDLTM31720).

[SDLTM31720 – Application – Trusts and powers: Settlements](#)

2.4 'Beneficially entitled' covers, broadly, an interest:

- to which a person is entitled, or
- in which the person has an interest for its own benefit

2.5 In England, Wales and Northern Ireland this includes property which a person beneficially owns (see IHTM04441 for more detail). In Scotland, the term 'ownership' does not necessarily equate to beneficial entitlement, for example where the land that is being transferred is subject to missives of sale or there is an unrecorded disposition. This is because of the Scottish system of unitary ownership.

2.6 The consequences of these rules are that where a bare trust exists and the bare trustee is the legal owner of the single-dwelling interest it is the nature of the beneficial owner(s) that is important for considering whether the dwelling is liable to ATED. If the beneficial owner is an individual this will mean that there is no need for the beneficial owner to make returns as they do not meet the ownership condition. Similarly it is not necessary for the bare trustee, even where it meets the ownership condition, to make returns as it is not beneficially entitled to the interest.

[IHTM04441 – Legal background: the concept of beneficial ownership \(England, Wales & Northern Ireland\)](#)

2.7 A person is not beneficially entitled to property held:

- purely in a fiduciary capacity (for example as a trustee)
- in a representative capacity (for example as an executor or a trustee in bankruptcy) or
- by way of security (for example as a mortgagee prior to foreclosure)

2.8 Where a partnership with a corporate member holds a single-dwelling interest, the ownership condition can be met whether or not the partnership has its own legal personality and is capable of being beneficially entitled to assets in its own name.

### **3 Person liable FA13/S96**

3.1 The 'chargeable person' – that is, the person liable to make returns and pay ATED, is:

- where a company meets the ownership condition, the company
- where a partnership meets the ownership condition, the responsible partners
- where a unit trust scheme meets the ownership condition, the trustee of the scheme
- where an open-ended investment company meets the ownership condition, the body corporate referred to in section 236(2) of the Financial Services and Markets Act 2000
- where an EEA UCITS meets the ownership condition which is not an open-ended investment company or unit trust scheme, the management company for that UCITS, or
- in any other case, the person who has day-to-day control over the management of the property subject to the scheme

3.2 'The responsible partners' means all the persons who are members of the partnership concerned on the first day in the chargeable period on which the partnership meets the ownership condition. These partners are jointly and severally liable to pay the tax.

### **4 Liability of persons jointly entitled FA13/S97**

4.1 In determining whether a person is liable to ATED, it does not matter whether they hold the single-dwelling interest outright or if they are jointly entitled with others. Specifically, where a company is jointly entitled (whether as a member of a partnership or otherwise) to a single-dwelling interest, ATED applies in respect of the whole interest and not just the company's share in that interest.

4.2 Where a company or responsible partners and one or more other persons are jointly entitled to a single-dwelling interest on the first day in a chargeable period on which the company or responsible partners are liable to ATED in respect of that interest, the company or responsible partners and the other person or persons are jointly and severally liable for the tax charged for that period. This

applies even if the other person or persons are not themselves within the charge to ATED.

**4.3 Example one** - a company beneficially owns 10 per cent of a single-dwelling interest (either as joint tenant or in partnership). The single-dwelling interest as a whole is worth £5m. The company is jointly and severally liable for ATED for the band appropriate to a £5m valuation and not just for its 10 per cent proportion (i.e. £500k). The company must complete the ATED return and pay the tax.

**4.4 Example two** - a company owns 10 per cent of a single-dwelling interest worth £5m on 1 April 2012 and sells 5 per cent on 1 August 2014 (in other words half of its 10 per cent interest). The company can make no claim to recover ATED following the disposal of its 5 per cent interest, since it is still deemed to own the whole interest in that single-dwelling interest.

## **5 Collective investment schemes: liability for and collection of tax FA13/S98**

5.1 The major participants (see [paragraph 34.10](#) of this guidance) in a collective investment scheme on the first day of a chargeable period are jointly and severally liable with the chargeable person for the tax charged for the period. The liability of a major participant is, however, limited to the market value of the major participant's holding in the scheme.

5.2 Tax due may be recovered from the depositary (if any) of a collective investment scheme, but only up to the amount or value of any money or other scheme property that has been entrusted to the depositary for safekeeping.

5.3 Out of the money entrusted to it, the depositary may retain enough money to pay the tax. The depositary is entitled to be fully reimbursed by the participants in the scheme for any amounts recovered.

5.4 For this purpose:

- 'depositary' has the meaning given by section 237(2) Financial Services and Markets Act 2000
- 'participant' has the meaning given by section 235 Financial Services and Markets Act 2000
- 'major participant' is defined at FA13/S136(4) (see [paragraph 55.2](#) of this guidance)

5.6 For ATED purposes generally, 'market value' is determined as for the purposes of TCGA 1992 (see, particularly, section 272 of that Act).

## **6 Amount of tax chargeable FA13/S99**

6.1 The amount of tax chargeable is based on the value of the dwelling at 1 April 2012, or, if later, when the dwelling is acquired by a company or when the dwelling is considered to be completed. Where the dwelling has been acquired



part way through a chargeable period then the liable persons' first year of charge will be a proportion of the full year charge.

6.2 The amount of tax chargeable in respect of a single-dwelling interest for a chargeable period (the 'annual chargeable amount') is determined by the following table. These amounts will differ over time due to the indexation of the annual chargeable amounts.

With effect from 1 April 2015 the threshold will be reduced to £1m with an annual chargeable amount of £7,000 and further reduced from 1 April 2016 with an annual chargeable amount of £3,500.

**Chargeable amounts for chargeable period 1 April 2014 to 31 March 2015**

Annual chargeable amount	Taxable value of the interest on the relevant day
£15,400	More than £2 million but not more than £5 million.
£35,900	More than £5 million but not more than £10 million.
£71,850	More than £10 million but not more than £20 million.
£143,750	More than £20 million.

**Chargeable amounts for chargeable period 1 April 2013 to 31 March 2014**

Annual chargeable amount	Taxable value of the interest on the relevant day
£15,000	More than £2 million but not more than £5 million.
£35,000	More than £5 million but not more than £10 million.
£70,000	More than £10 million but not more than £20 million.
£140,000	More than £20 million.

6.3 The 'relevant day' is the first day in a chargeable period on which the chargeable person is within the charge i.e. that the person owns the interest and its value (at the most recent valuation date) exceeds £2 million.

6.4 If the relevant day is the first day of the chargeable period, the full amount is due.

6.5 If the relevant day is later than the first day of the chargeable period, the amount due is the 'relevant fraction' of the full amount.

6.6 The relevant fraction is determined by:  $\frac{N}{Y}$

Where N is the number of days from (and including) the relevant day to the end of the chargeable period and Y is the number of days in the chargeable period.

6.7 **Example:** A company acquires a single-dwelling interest valued at £2.5 million on 1 October 2013.

In this case N is 182 days and Y is 365 days. The amount chargeable is therefore

$$\frac{182}{365} \times £15,000 = \mathbf{£7,479}$$

6.8 These amounts apply for the chargeable period 1 April 2013 - 31 March 2014. The law provides for the amounts to be increased in future years in line with rises in the Consumer Prices Index – see [paragraph 8](#) of this guidance.

## **7 Interim Relief FA13/S100**

7.1 ATED returns and payment of liability need to be made (with only two exceptions ([see paragraph 26](#))) within 30 days of the start of the chargeable period. Interim relief is designed to provide taxpayers with the opportunity to claim a relevant relief at the point they make their return rather than having to wait until the end of the chargeable period. This should help taxpayers with their cash flow where they are entitled to claim a relief. However, if the facts change during the course of the year a taxpayer will be required to make a return of adjusted chargeable amount ([see paragraph 48](#)).

7.2 The following paragraphs and examples set out how to calculate the amount of interim relief that can be claimed. It can be complicated where there are periods within the chargeable period where the taxpayer is using the dwelling for a relievable purpose and a non-relievable purpose. Where the dwelling, within the chargeable period has only been used for a relievable purpose (up to the point of making the return) then interim relief may be claimed for the whole of the chargeable period.

7.3 Interim relief is available where ATED is charged in respect of a single-dwelling interest for a chargeable period. If the taxpayer wishes to claim interim relief it **must** be claimed in an ATED return, or in an amended ATED return, and should reflect the facts at the date that the return is made and on the assumption that those facts won't change. Interim relief cannot be claimed on anticipated future events (such as an expectation to meet the conditions of a relief at a future date when those conditions are not met at the date the return (and claim for interim relief) is made).

7.4 Interim relief may be claimed in the following circumstances:

- a relief under FA13/S133-150 can be claimed

- the chargeable person ceases to be within the charge in respect of the interest e.g. because the interest is sold or leased to a third party, or
- the taxable value of the interest falls so that a lower rate of charge becomes due

7.5 Interim relief must be claimed before the end of the chargeable period to which the relief relates in an ATED return or by amending such a return. Interim relief may be claimed by a taxpayer for the chargeable period in which the return is made. It is claimable based on the facts at the date the return is made and treats all days following that date as having the same facts as the date the return is made. The period for making a claim for interim relief is the same as the filing date for the return (see [paragraph 47](#)). It should be noted that where the filing date for a return is after end of the chargeable period a claim for interim relief cannot be made. This is because in those cases, at the date the return is made, all relevant facts are known and therefore no interim relief is appropriate as a claim for relief is possible.

**Example:** A Ltd buys a dwelling that represents a single dwelling interest on 10 March 2014. It is required to submit its return for the first chargeable period (10/3/2014-31/3/2014) by 9 April 2014. If it makes the return on or before 31 March 2014 it may make a claim for interim relief. However, if it sends the return in after 31 March 2014 then it may still claim relief. In that case, given that the return is sent in after the end of the chargeable period a claim for relief, rather than interim relief may be made.

Where a new property comes into charge (see [paragraph 26](#) and [paragraph 47.4](#)) and the time for submitting the first return is three months, the same principle applies. The return may be submitted, notwithstanding the three month period, before the end of the chargeable period and a claim to interim relief made.

7.6 Where the relief is claimed, the amended annual chargeable amount is determined on the basis that the day of the claim is the relevant day and the amount of tax chargeable is the sum of amount A and amount B.

7.7 **Amount A** is the amount of tax due for days in the 'pre-claim period' on which the chargeable person is within the charge and for which interim relief does not apply. The 'pre-claim period' is the period prior to the date on which the ATED return, or the amended ATED return, is completed and sent to HMRC.

7.8 **Amount B** is:

- zero if any of the reliefs at FA13/S133-150 apply, or the chargeable person is not within the charge, at the date of claim and
- in any other case, the fraction of the annual chargeable amount determined by

$$\frac{X}{Y}$$

where X is the number of days between (and including) the day of the claim and the end of the chargeable period and Y is the number of days in the chargeable period.

- 7.9 **Example one** - A Ltd owns a dwelling that it has used it in its business of opening the dwelling to the public since 1974. It has met the qualifying conditions since opening and it is intended that the dwelling will continue to be used in that business for many more years. When completing the 2015-16 ATED return on 20 April 2015 A Ltd (as it has in earlier years) needs to consider the quantum of its claim to interim relief. The dwelling was valued at £23.8 million for the purposes of ATED on 1 April 2012.

In strictness the calculation of the interim relief is based on the calculation of Amounts A and B. Amount A is zero as there are no days in pre-claim period that are not relievable as the conditions for the Dwellings Opened to the Public relief are met in the period 1 April - 19 April 2015 (the day before the return is sent to HMRC). Amount B is also zero as the 20 April 2015 (the day of the claim) is also relievable.

The sum of Amounts A and B are therefore £0 + £0 = £0. A Ltd should send in its return for 2015-16 showing a liability of zero and a claim for Dwellings Opened to the Public Relief.

As can be seen, where the taxpayer is entitled to relief for the whole of the period before it makes the return and on the day that it makes the return then full interim relief may be claimed.

- 7.10 **Example two** - B Ltd owns a dwelling. The company has permitted a non-qualifying person to occupy the dwelling for a number of years and has paid ATED for all chargeable periods since 2013-14. The dwelling was valued at £6.8 million for the purposes of ATED on 1 April 2012. At the end of the chargeable period 2015-16 it is decided that the dwelling will be rented to a person who is not a non-qualifying individual. That tenant has been found and will take up occupation on 18 April 2017. On these facts this will not constitute 'steps' and therefore relief is not available from the start of the chargeable period (see [paragraph 31.6](#)). From 18 April 2017 B Ltd can claim interim relief based on the use of the property at that date. B Ltd completes and sends its return to HMRC on 25 April 2017.

In strictness the calculation of the interim relief is based on Amounts A and B. Amount A needs to reflect the number of days in the pre-claim period on which ATED must be paid but not days which are relievable. This period in this example is the period 1 April 2017 - 17 April 2017 (17 days). The relievable days in the pre-claim period are 18 April 2017 - 25 April 2017 it is not, however, necessary to establish this period for the purposes of calculating Amount A. So, Amount A is:

$$\frac{1}{365} \times 35,000 = 95.8895 \times 17 = \mathbf{£1,630}$$

Amount B will be zero because the day of the claim (25 April 2017) is a relievable day as relief under section 133 (Property Rental Businesses Relief) may be claimed.

The sum of Amounts A and B are therefore £1,630 + £0 = £1,630. B Ltd should send in its return for 2017-18 showing a liability of £1,630 and a claim for Property Rental Businesses Relief.

The situation can be more simply viewed as the dwelling is within the scope of charge for the first 17 days of the year and thereafter a claim to interim relief may be made for the rest of the year. The company has to pay 17 days worth of ATED and make a claim for interim relief for the remainder of the chargeable period.

- 7.11 **Example three** - C Ltd owns a dwelling. The company has permitted a non-qualifying person to occupy the dwelling for a number of years and has paid ATED for all chargeable periods since 2013-14. The dwelling was valued at £10.8 million for the purposes of ATED on 1 April 2012. On 1 October 2017 it is decided that the dwelling will be rented to a person who is not a non-qualifying individual. Again, on these facts this will not constitute 'steps' and therefore relief is not available from the start of the chargeable period (see [paragraph 31.6](#)). A tenant has been found and takes up occupation on 1 December 2017. C Ltd originally sent in a return on 25 April 2017. As there was no relief available at that point it showed a liability of £70,000.

On 23 December 2017 the company makes an amended return to reflect the fact that it is now using the dwelling in a Property Rental Business. The calculation of the interim relief is based on Amounts A and B. Amount A needs to reflect the number of days in the pre-claim period on which ATED must be paid but not days which are relievable. In this example that period is 1 April 2017 – 30 November 2017 (244 days). The relievable days in the pre-claim period are 1 December 2017 – 23 December 2017. It is not, however, necessary to establish this period for the purposes of calculating Amount A.

$$\frac{1}{365} \times 70,000 = 191.779 \times 244 = \mathbf{£46,794}$$

Amount B will be zero because the day of the claim (23 December 2017) is a relievable day as relief under section 133 and Property Rental Businesses Relief may be claimed.

The sum of Amounts A and B are therefore £46,794 + £0 = £46,794. C Ltd may send in an amended return for 2017-18 showing; a liability of £46,794, a claim for Property Rental Businesses Relief, that the return is an amended return, and, that the return includes a repayment claim (including the additional information required to enable repayment to be made).

- 7.12 **Example four** - D Ltd acquires a single-dwelling interest valued at £5.5 million on 1 October 2015. Its first chargeable period is 1 October 2015 – 31 March 2016. The dwelling is to be occupied by a non-qualifying individual and therefore D Ltd has an ATED liability. The annual chargeable amount is

$$\frac{1}{366} \times 35,000 = 95.627 \times 183 = \mathbf{£17,499}$$

The property consists of a number of dwellings that are aggregated together so that they represent a single dwelling interest (see dwellings in grounds of another dwelling, and, dwellings in the same building at [paragraphs 22](#) and [paragraph 23](#) of this guidance respectively). On 1 January 2016 the company sells the dwellings that are superfluous to its needs, which reduces the value of its interest in the original single dwelling interest to £4.25 million. The company claims interim relief on the same day.

In this case amount A is  $\frac{1}{366} \times 35,000 = 95.627 \times 92 = \text{£}8,797$

Amount B is  $\frac{91}{366} \times 15,000 = \text{£}3,729$

The amended annual chargeable amount is **£12,526**

The sum of Amounts A and B are therefore  $\text{£}8,797 + \text{£}3,729 = \text{£}12,526$ . D Ltd should send in its amended return for 2017-18 showing: a liability of £12,526, that the return is an amended return and that the return includes a repayment claim (including the additional information required).

## **8 Indexation of annual chargeable amounts FA13/S101**

- 8.1 The annual chargeable amounts for chargeable periods commencing on 1 April 2014 and subsequently will be increased in line with increases in the Consumer Prices Index (CPI).
- 8.2 The amounts for a new chargeable period will be increased by the annual percentage increase in CPI for the previous September, rounded down to the nearest multiple of £50.
- 8.3 The Treasury will before 1 April each year make an order setting out the annual chargeable amounts for chargeable periods beginning on or after that date.
- 8.4 For this purpose the CPI is the all items consumer prices index published by the Statistics Board.
- 8.5 This means that from the chargeable period 2014-15 onwards the amount of tax chargeable will change. HMRC will publish the new rates for the bands in good time for completion of returns and you should check the ATED pages on the HMRC website to ensure you are using the correct amount.

## **9 Taxable value FA13/S102**

- 9.1 The taxable value of a single-dwelling interest on any day is its market value at the end of the most recent 'valuation date'.
- 9.2 Valuation dates include
  - 1 April 2012
  - each 1 April falling 5 years, or a multiple of 5 years, after 1 April 2012
  - the effective date of any substantial acquisition of a chargeable interest in or over the dwelling by a company, as an asset of a partnership or for the purposes of a collective investment scheme, and
  - the effective date of any substantial disposal of part (but not the whole) of the interest

Guidance on the meaning of the effective date of acquisition and disposal can be found at [paragraphs 24 and 25](#) below. Broadly it is the date of completion of any contract for the acquisition or disposal or the date the contract is 'substantially performed' (i.e. when the vendor has paid a substantial amount of the consideration or has taken possession of all or substantially all of the property).

- 9.3 References to a disposal of part of the interest include the grant of a chargeable interest (but not an option) out of the single-dwelling interest.
- 9.4 For definitions of a 'substantial acquisition' and a 'substantial disposal' see [paragraph 10](#) of this guidance below.

## **10 Substantial acquisitions and disposals FA13/S103**

- 10.1 A substantial acquisition or disposal will result in a revaluation event for the purposes of ATED. For example, if a dwelling was valued at £4 million on 1 April 2012 (the first fixed valuation date) and the owner disposed of an interest in the dwelling (perhaps a small parcel of land) for £100,000 on 1 October 2015 a revaluation would be required. That revaluation would not be £3.9million (£4million-£100,000), but would be the market value of that reduced interest on the date of the disposal. The reduced interest could have a market valuation on 1 October 2015 of more than £4 million and may even move the dwelling from one band to another.
- 10.2 It should be noted that these rules cover both an initial and a subsequent acquisition or disposal of an interest in a single dwelling interest. There is therefore a valuation date at the first acquisition by a person liable to ATED and also where there is a further acquisition (or disposal) of an interest in the same single-dwelling interest.
- 10.3 Generally, an acquisition of a chargeable interest in a dwelling is a 'substantial acquisition' if the chargeable consideration for the acquisition (including any linked acquisition of a chargeable interest in or over the same dwelling) is £40,000 or more.
- 10.4 A disposal of part (but not the whole) of a single-dwelling interest is a 'substantial disposal' if the chargeable consideration for the acquisition of the chargeable interest by the person acquiring (including any chargeable interest in or over the same dwelling that is disposed of in a linked transaction) is £40,000 or more.
- 10.5 If the transaction concerned is a transaction between persons who are connected with each other or are not acting at arm's length, the chargeable consideration is taken to be the market value of the chargeable interest concerned (including the market value of any chargeable interest in or over the same dwelling that is acquired or disposed of in a linked transaction).
- 10.6 Transactions are 'linked' if they form part of a single scheme, arrangement or series of transactions between the same vendor and purchaser or, in either case, persons connected with them.

- 10.7 'Chargeable consideration', 'purchaser' and 'vendor' have the same meaning as for Stamp Duty Land Tax.
- 10.8 References to a disposal of part of a single-dwelling interest include the grant of a chargeable interest but again will not include the grant of an option.

## **11 No double charge FA13/S104**

- 11.1 Tax in respect of a single-dwelling interest is charged only once for any chargeable day even if more than one person is the 'chargeable person'.
- 11.2 Such a circumstance might occur if there are two companies that jointly own (or own separate interests that are treated as a single dwelling interest because they are connected) both complete returns for the same single dwelling interest for the same chargeable period.
- 11.3 In these circumstances both companies should not complete separate returns, rather they should decide which is to send in the single return required.

## **Adjustment of amount charged**

### **12 Adjusted chargeable amount FA13/S105**

- 12.1 The adjusted chargeable amount determines the tax chargeable for a chargeable period in which relief has been claimed for part of the period - the dwelling has ceased to be chargeable in the period - or there has been a change in the annual chargeable amount following a valuation date. The adjusted chargeable amount of tax for a chargeable period is the total of the 'daily amounts' for that period for all days on which the tax is chargeable in respect of the single dwelling interest.
- 12.2 The 'adjusted chargeable amount' is the total of the daily amounts for all the days in a chargeable period on which the chargeable person is within the charge with respect to a single-dwelling interest.  
The daily amount is:  $\frac{1}{Y} \times A$   
where Y is the number of days in the chargeable period and A is the annual chargeable amount for the single-dwelling interest, determined on the basis that the actual day is the relevant day.
- 12.3 **Example** - A company acquires a dwelling for £2.5 million on 1 October 2013 and disposes of it on 31 December 2013. The company is within the charge for 92 days and there are 365 days in the chargeable period.

The daily amount is  $\frac{1}{365} \times 15,000 = £41.0955$



The adjusted chargeable amount is  $92 \times 41.0955 = \text{£}3,780$

### **13 Adjustment of amount chargeable FA13/S106**

- 13.1 Where the adjusted chargeable amount is greater than the amount initially charged for a chargeable period, the amount of tax charged is increased to the adjusted chargeable amount. The taxpayer must make a return of adjusted chargeable amount within 30 days of the start of the next chargeable period, that is to say, by 30 April of the next chargeable period.
- 13.2 Where the adjusted chargeable amount is less than the amount initially charged, relief may be claimed to reduce the amount of tax charged to the lower figure.
- 13.3 Relief must be claimed in an annual tax on enveloped dwellings return, or by an amendment of such a return. An amendment to a return may be made at any time after the original return was made so long as it is no later than the end of the chargeable period following the one to which the claim relates.
- 13.4 Relief may be given by repayment of tax or otherwise.

## **Chargeable interests and 'single-dwelling interest'**

### **14 Chargeable interests FA13/S107**

- 14.1 'Chargeable interest' means:
- an estate, interest, right or power in or over land in the UK, or
  - the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power (see FA03/S48(1) – SDLT legislation)
- 14.2 Chargeable interests in England and Wales and Northern Ireland include:
- a freehold estate (the nearest equivalent to absolute ownership, sometimes referred to as an 'estate in fee simple')
  - a leasehold estate (sometimes referred to as a 'term of years')
  - an undivided share in land
  - a right in or over land such as an easement or profit a prendre
  - a rentcharge
  - in Northern Ireland, a ground rent or fee farm rent
  - the right to receive rent (IRC v John Lewis Properties Ltd [2001] STC 1118 at 1134[16])
  - the benefit of a restrictive covenant
  - the benefit of a positive covenant (an example of the benefit of an obligation)
  - an equitable interest in land such as a life interest or an interest in reversion or in remainder.

- a executor's or trustee's power of appointment (the only likely example in practice of a power over land)
- 14.3 Chargeable interests in Scotland include:
- ownership of land
  - any other heritable right in or over land
  - the tenant's interest under a lease of land
  - a servitude
  - a life rent
- 14.4 However interests that are defined as an 'exempt interest' are not chargeable interests for the purposes of ATED. These are any security interest (other than a rentcharge), a licence to use or occupy and (in England and Wales and Northern Ireland) a tenancy at will. This means that a security over a property, perhaps as a result of a mortgage, is not a chargeable interest for the purposes of ATED.

## **15 Meaning of 'single dwelling-interest' FA13/S108**

- 15.1 A 'single-dwelling interest' is a fundamental concept in ATED. It is a chargeable interest in land that consists of a single dwelling. The definition of a dwelling can be found at [paragraph 19](#) of this guidance.
- 15.2 Where a chargeable interest consists of more than one single dwelling, then special rules exist which provide that the chargeable interest held must be treated as though the taxpayer held separate chargeable interests in the respective single dwellings. Similarly, if a chargeable interest consists of a mix of one or more dwellings and non-residential property then the special rules operate so that the chargeable interest held must be treated as though the taxpayer held separate chargeable interests in the single dwellings and the non-residential property. This is important as the identification of the single-dwelling interest is used to establish the valuation of the property that is within the charge to ATED.
- 15.3 An example of the first special case would be where a taxpayer owns a chargeable interest over a three acre site and there are 2 houses on that site. Each house would need to be considered to identify whether it was a single dwelling interest or two separate ones. It will also be important to establish the extent of the garden and grounds of each dwelling for valuation purposes and also, if there are two separate dwellings, whether the rules at [paragraph 22](#) of this guidance which deal with the dwellings in the grounds of another dwelling are relevant.
- 15.4 An example of the second special case would be where there is a chargeable interest over a building that consists of a non-residential unit, for example a shop, and a flat above. In this case it is necessary to treat that single chargeable interest as though there were a separate chargeable interest over each separate dwelling (in this example there is only one separate dwelling) and a further separate chargeable interest over the non-residential property.

## **16 Situations where there are different interests held in the same dwelling FA13/S109**

- 16.1 Where the same person holds two or more chargeable interests in the same dwelling, they are treated as one interest for the purposes of ATED. The two interests are valued as though they were that single aggregated interest based on the 'marriage value' (i.e. what a third party purchaser would be willing to pay to acquire both interests together). Only one return needs to be filed in this situation.
- 16.2 **Example one** - A Ltd was granted, 25 years ago, a 50 year lease on 1 XXX Street from an unconnected freeholder. A Ltd was granted a lease extension 5 years ago for a further 70 years to start at the termination of the first lease by the same unconnected freeholder. At the valuation date the separate leases have values of: remaining part of the 50 year lease, £3.25 million, the 70 year lease commencing in 25 years, £1.25 million. The valuation of the two leases if marketed together (in effect an interest in the property for the following 95 years) is £6.5 million. The single dwelling interest is therefore in the £5-£10 million band and not the £2-£5 million band.
- 16.3 **Example two** - B Ltd holds the freehold to 2 XXX Street. B Ltd has granted a 50 year lease to an unrelated individual who has, in turn, granted an occupational lease to B Ltd. For the purposes of ATED the freehold reversion and occupational lease held by B Ltd are treated as one interest and are valued on the basis of what a willing purchaser would be prepared to pay to acquire both at the same time.
- 16.4 **Example three** - C Ltd holds the freehold interest in 3 XXX Street. C Ltd's title includes the benefit of certain restrictive covenants and easements over the surrounding properties that arise only because of the ownership of the freehold of 3 Smith Street. Although these interests are technically distinct chargeable interests, for the purposes of ATED they are treated as one.

## **17 Situations where different interests in the same dwelling are held by connected persons FA13/S110**

- 17.1 Similar aggregation rules apply where two or more chargeable interests are held in the same dwelling by connected persons they will, as in the case where the separate interests are held by the same person, also be aggregated for the purposes of ATED (see [paragraph 55](#) of this guidance for guidance on connection). The rules operate in a slightly different manner to reflect the fact that the interests are held by different people.
- 17.2 Firstly, each person is treated as being beneficially entitled to any interests in that dwelling held by a person with whom they are connected as well as those interests to which they are, in law, beneficially entitled. For each connected person, the value of the interests in the dwelling are aggregated in determining any liability to ATED (on the same 'marriage value' basis outlined at [paragraph 16](#) of this guidance above). However, only a single ATED liability is payable in respect of the aggregated interests and it is for the liable

persons to decide who is to file the return and comply with the obligations (see also [paragraph 4](#) of this guidance regarding joint and several liability).

- 17.3 This provision also applies in respect of separate interests held in the same dwelling by collective investment schemes and other persons with whom that scheme is connected (including other collective investment schemes). The definition of a person who is connected to a collective investment scheme is covered in more detail at [paragraph 55](#) of this guidance. However, broadly it will include a person who is a participant in the scheme and is entitled to a 50 per cent or greater share of the income or assets of the scheme (a 'major participant').
- 17.4 **Example one:** B Ltd was granted, 25 years ago, a 50 year lease on 1 XXX Street (a dwelling) by its parent company A Ltd which owns the freehold interest. At the valuation date the lease and the freehold have values of: remaining part of the 50 year lease, £750,000, and the freehold, £1.25 million. The valuation of the lease and the freehold, if marketed together (in effect a disposal of the unencumbered freehold interest in the dwelling) is £3.5 million. The single dwelling interest is therefore in the £2-£5 million band rather than falling outside the charge as having a separate valuation of just £2 million.
- 17.5 **Example two:** Property Unit Trust was granted a 10 year lease over a dwelling by Mr Z who is entitled to 50 per cent or more of the income or assets of the Property Unit Trust. Separately Mr Z holds the freehold interest in his own name. At the valuation date the lease and the freehold have values of: remaining part of the 10 year lease, £750,000, and the freehold, £1.75 million. The valuation of the lease and the freehold, if marketed together (in effect a disposal of the unencumbered freehold interest in the dwelling) is £3 million. The single dwelling interest is therefore in the £2-£5 million based on the marriage value of the two separate interests.
- 17.6 Special rules apply where one of the connected persons is an individual. Where there are two (or more interests) in a single dwelling interest where one is owned by a company and one by an individual who is a connected person to the company then the aggregation rules in section 110 FA 2013 only operate where the company's interest is worth £500,000 or more.
- 17.7 **Example three:** Z Ltd owns a long lease on a house (originally granted for 70 years). Mr Y owns the issued share capital in Z Ltd. Mr Y and Z Ltd are connected persons. Z Ltd has granted a long lease to Mr Y out of its lease interest. Separately Mr Y has purchased a lease extension from the freeholder (an unconnected person) that covers the 90 years after the end of Z Ltd's lease. Z Ltd's interest is worth £1,000 (due to the lease it has granted out of its lease). As the company's interest is not worth more than £500,000 the aggregation rules in section 110 FA 2013 are not triggered and Z Ltd is not within the scope of ATED.

## ***18 Different interests held in the same dwelling: effects of reliefs etc FA13/S111***

- 18.1 Where one interest in a dwelling is owned by a public body (see [paragraph 43](#) of this guidance in relation to public bodies) or by a body established for

national purposes (see [paragraph 44](#) of this guidance) then that interest is not to be aggregated with any other interests in the same single dwelling interest for the purposes of section 110 FA 2013 (interests held by connected persons – see [paragraph 17](#) of this guidance above).

- 18.2 Furthermore, section 110 FA 2013 is not applied to cases where the single dwelling interest is; exempt under section 151 (charitable companies - see [paragraph 42](#) of this guidance), relievable under section 150 (providers of social housing - see [paragraph 41](#) of this guidance) or, deemed to have a zero value under section 153 (property conditionally exempt from Inheritance Tax – see [paragraph 45](#) of this guidance).
- 18.3 Where there are separate interests held in a dwelling, whether by the same person or connected persons, they will be treated as a single-dwelling interest for the purposes of ATED. Where the combined interests include a freehold or leasehold interest and a leasehold interest granted out of that freehold or that superior leasehold interest then whether a relief is available (and which relief if there are alternatives) or not is decided on the basis of the use to which the most inferior interest is put. This rule applies to all reliefs that must be claimed. Where the inferior interest is only for part of the single-dwelling interest then this rule has effect only in relation to that part.

## Meaning of ‘dwelling’

### **19 Meaning of Dwelling FA13/S112**

- 19.1 ATED is only charged on single-dwelling interests. The meaning of a single dwelling interest is dependant upon firstly identifying a ‘dwelling’. A ‘dwelling’ has its normal meaning and will comprise a distinct unit of residential property (i.e. a house or flat which is considered as one residence). Non-residential properties are not within the charge to ATED.
- 19.2 Furthermore, a dwelling is defined not only as a property that is used as a dwelling but also one that is suitable for use as a dwelling. This is a concept that exists in SDLT and the definition can be found SDLTM20076. Whether a property is suitable for use as dwelling is a question of fact. Broadly the same approach will also be taken in ATED as in SDLT. SDLTM20076 states that:

*‘Use at the effective date of the transaction overrides any past or intended future uses for this purpose. If a building is not in use at the effective date but its last use was as a dwelling, it will be taken to be ‘suitable for use as a dwelling’ and treated as residential property, unless evidence is produced to the contrary.*

*Undeveloped land is essentially non-residential but may be residential property if, at the effective date, a residential building is being built on it.*

*Where, at the effective date, an existing building is being adapted or marketed for, or restored to, domestic use, it is treated as residential property.’*

[SDLTM20076 – Reliefs: disadvantaged areas relief](#)

- 19.3 The 'dwelling' may extend beyond the actual building. It will include land which comprises the grounds or gardens to a dwelling and any other land that is, or is at any time, intended to be occupied or enjoyed with a dwelling. A dwelling also includes land which subsists (or is intended at any time to subsist for the benefit of the dwelling). This ensures that any land which would naturally be associated with a particular house is treated as part of that dwelling. The most obvious example is a garden, but a tennis court, drive, garage, swimming pool and changing room, summerhouses etc would all be included as part of the dwelling for the purposes of ATED. A common sense approach should be adopted, and in most cases it should be obvious what land is occupied or enjoyed with a dwelling. Where there is genuine uncertainty over the extent of the dwelling you should write with all relevant facts to HMRC, ATED Policy Team, Room 3C/20, 100 Parliament Street, London, SW1A 2BQ.
- 19.4 It should be noted that where a part of a building is capable of being used as a separate dwelling, this will not prevent it forming part of a larger single dwelling. This will also apply in respect to a separate building in the grounds or gardens. For example, where there is a 'flat' above the garage or a separate 'flat' inside the house, these may be included as part of the main dwelling. Whether this is the case will depend on the facts – if the flat in question is occupied, as a matter of fact, as a separate dwelling, it will not be included as part of the greater whole. Where the flat is not separately occupied however (e.g. a family member occupies the flat and planning consent prohibits the separate sale of the two parts), it will be considered as part of a larger dwelling.
- 19.5 It is not relevant if a building is temporarily unsuitable for use as a dwelling for any reason. This could be caused, for example, if the dwelling suffers accidental damage or major repairs are being undertaken. Whether unsuitability is temporary or permanent is a question of fact. Where a house is completely gutted by fire this is likely to be a case of permanent unsuitability. Where, in contrast, there is a serious fire in a house which has damaged a few rooms or the roof and which means the building cannot be occupied while the damage caused by smoke and water is repaired, this will be temporary and disregarded when deciding whether a building is a 'dwelling' for the purposes of ATED (this is subject to specific rules – see [paragraph 29](#) of this guidance).
- 19.6 Certain types of living accommodation are specifically excluded from the definition of 'dwelling'. These include:
- residential accommodation for school pupils
  - residential accommodation for students, including halls of residence for students in further or higher education
  - residential accommodation for members of the armed forces
  - an institution that is the sole or main residence of at least 90 per cent of its residents
  - a home or institution providing residential accommodation for children
  - a home or institution providing residential accommodation with personal care for persons in need of personal care by reason of old age,

disablement, past or present dependence on alcohol or drugs or past or present mental disorder

- a hospital or hospice
- a prison or similar establishment
- a hotel or similar establishment

## **20 Substantial performance of 'off plan' purchase FA13/S113**

20.1 In some cases a purchaser may contract to purchase land and have a dwelling built on it. This provision applies in such cases where the consideration for the transaction is given before construction or adaptation of the dwelling has started.

20.2 In these circumstances, 'substantial performance' will occur for SDLT purposes and, where the purchaser is a non-natural person and the chargeable consideration exceeds £2 million, SDLT will be payable at 15 per cent at that point.

20.3 This means that where the 15 per cent SDLT rate applies, a liability to ATED will arise at the same point, and ensures continuity of treatment between the SDLT and ATED regimes.

20.4 Where:

- a contract is entered into on this basis
- 'substantial performance' of the contract takes place before the contract is completed
- the date of substantial performance is treated as completing the acquisition provided for under the contract (FA13/S122 - [paragraph 25](#) of this guidance), and
- construction or adaptation of the building, or the part of a building, has not begun by the time the contract is substantially performed

then the interest acquired under the contract is deemed to be an interest in land which consists of or includes a dwelling.

20.5 'Substantial performance' occurs where the purchaser enters into occupation of the land or pays over the whole, or substantially the whole, of the chargeable consideration for SDLT purposes (FA03/S44). For this purpose HMRC takes 'substantially the whole' to mean 90 per cent or more of the chargeable consideration. See SDLTM07750 onwards for further guidance on substantial performance.

[SDLTM07750 – Scope: When is SDLT chargeable: Contracts and substantial performance: Substantial performance at completion FA03/S44\(3\)](#)

20.6 In these circumstances, where the ownership condition is met and the value of the interest acquired exceeds £2 million, the interest will be a single dwelling interest and the relevant date for ATED purposes will be the date of substantial performance.

- 20.7 Liability to ATED will cease if and when the obligation under the contract to carry out the construction or adaptation ceases to have effect without the construction or adaptation having been begun.
- 20.8 For this purpose 'contract' includes any agreement (including, in the case of Scotland, missives of let not constituting a lease).

## **21 Parts of a greater whole FA13/S115**

- 21.1 A part of a building which is itself suitable for use as a single dwelling is not excluded from forming part of a larger single dwelling.
- 21.2 A building or structure situated in the garden or grounds of a dwelling and occupied or enjoyed with the dwelling is not excluded from being treated as part of the dwelling because it is itself suitable for use as a single dwelling.
- 21.3 **Example one** - A house worth £2.2 million includes a staff flat valued at £250,000. The building is owned by a company and is occupied by the company's principal shareholder.

The value of the single-dwelling interest is £2.2 million and ATED is due. The property cannot be split into separate interests of £1.95 million and £250,000.

- 21.4 **Example two** - A large country house incorporates a summer house in the garden. The summer house is itself suitable for use as a dwelling but is used by the occupant of the main house as part of the amenities of the house. The main house is valued at £4.95 million and the summer house at £100,000.

The value of the single dwelling interest is £5.05 million (there is no enhancement from the marriage value of the two dwellings) and ATED is due at an annual chargeable amount of £35,000. It is not possible to exclude the summerhouse in order to reduce the value to £4.95 million and pay ATED at the rate appropriate to the lower band.

## **22 Dwelling in grounds of another dwelling FA13/S116**

- 22.1 In certain circumstances two, otherwise separate, dwellings will be treated as a single dwelling for ATED purposes.
- 22.2 The first such situation is where a separate dwelling exists in the grounds or garden of another dwelling. Where that associated dwelling lacks separate access and is commonly owned, they will be treated as a single dwelling.
- 22.3 The associated dwelling will have 'separate access' in two situations.

- Where there is direct access from a highway which that dwelling adjoins (i.e. the associated dwelling abuts, and can be accessed directly from, a public road). This would be the case if the associated dwelling had its own dedicated drive which led directly to a highway and over which access was not restricted.



- Where the person entitled to possession of the dwelling has unrestricted vehicular access from a highway by virtue of a right of way. Where a right of access can only be exercised with prior permission or subject to restrictions on, for example, times of access or the type of vehicle which may be used, it will not pass this test.
- 22.4 This rule only applies where the 'common ownership' condition is met. This will apply in the following circumstances.
- Both dwellings are owned by the same company, or a company owns an interest in the main dwelling and a person connected with that company owns an interest in the associated dwelling. For this purpose a person connected with the company does not include a public body or a body established for national purposes.
  - One dwelling is owned by a collective investment scheme and the other is owned by the same collective investment scheme or by a connected person (including another scheme which is under common control).
- 22.5 The two dwellings will not be treated as a single-dwelling for the purposes of ATED on any day where a relief can, or could be, be claimed from ATED for either dwelling.
- 22.6 **Example** - In the grounds of a country house is a former gatekeeper's cottage. The cottage is a separate building with a small but separate garden surrounded by a low hedge. However, the cottage is located inside the grounds or gardens of the main dwelling. Both are held under separate titles at the Land Registry but the freehold is held by the same company. The associated dwelling is occupied by a member of staff who works in the grounds (that is to say not inside the dwelling itself) of the 'big house' under a short-term lease at a market rent. The cottage can only be accessed from the highway over the drive to the main house.
- 22.7 Whether the associated dwelling and main dwelling will be treated as a single-dwelling for the purposes of ATED will depend on the right of way the occupants of the associated dwelling has over the drive. If they have the benefit of an unrestricted easement it will have separate access and not be taken into account. If there is no formal right of way however, or that right is in some way limited, for example it does not allow the occupant to drive a car to the house or to do so only at certain hours, that will not amount to separate access and this provision will apply.

## ***23 Dwelling in the same building FA13/S117/S118/S119***

- 23.1 In certain circumstances, two separate dwellings in the same building can also be amalgamated and treated as a single dwelling for the purposes of ATED. This will be most relevant in blocks of flats but, for these purposes, a terrace of houses is also considered to be one building.
- 23.2 Two parts of a building are considered to be 'linked' (i.e. they are to be treated for ATED taxation purposes as a single-dwelling interest) where:
- each counts as a dwelling,

- there is private access between the two (or more) dwellings
- the two parts of the building are not used or suitable for use as a single dwelling
- the 'common ownership' and the 'use condition' is met for each of the dwellings

23.3 The use condition looks to who occupies the dwelling. It will be met where each of the dwellings in question is:

- occupied (or usually occupied) by a 'relevant individual'
- is intended to be occupied (or usually so occupied) by a 'relevant individual', or
- is unoccupied

23.4 A relevant individual is one who:

- is connected with the owner of the dwelling, whether the dwelling is held by a company or for the purposes of a collective investment scheme
- occupies (or is to occupy) the dwelling concerned on non-commercial terms or
- is employed in connection with (or to provide services in relation to) the occupation of a dwelling in the same building by such a person

23.5 'Private access' will exist between two dwellings where a person who is entitled to possession of one dwelling has a right of access (by reason of a right of way or other interest in land) to the other without passing over any part of the building to which a third party has access. A third party means any person other than the persons entitled to occupation of the two dwellings and anyone to whom they are connected. In the simplest case, two flats or houses may be linked by a corridor, passage or pathway to which only the occupants of the two dwellings have access. Where two flats or houses are linked by an internal door they will, unless there is significant evidence to the contrary to indicate otherwise (for example one is rented out to a non-qualifying individual) be a single dwelling.

23.6 This rule only applies where the 'common ownership' condition is met. The common ownership condition is met where both dwellings are owned by the same company, or where a company owns an interest in one dwelling and a person connected with that company owns an interest in the other. The two dwellings will also be under common ownership where one is owned by a collective investment scheme, and the other is owned by the same collective investment scheme or by a connected person (including another scheme which is under common control).

23.7 The two dwellings will not be treated as a single dwelling for the purposes of ATED on any day where a relief can be claimed from ATED for either dwelling.

23.8 'Chains' of dwellings with private access will all be linked and so be treated as a single dwelling. So if dwelling A is linked to dwelling B which is linked to dwelling C which is linked to dwelling D, all four dwellings will be amalgamated for ATED purposes.

## Acquisitions and disposals

### **24 Acquisitions and disposals of chargeable interests FA13/S120/S121**

24.1 For ATED purposes

- an **acquisition** of a chargeable interest means any acquisition including an acquisition effected by the act of parties to a transaction, by order of a court or other authority, by or under any statutory provision or by operation of law
- a **disposal** of a chargeable interest means the person no longer has any beneficial interest in the interest disposed of (or part where the disposal is of a part only)
- the **surrender or release** of a chargeable interest is an acquisition of that interest by any person whose interest or right is benefited or enlarged by the transaction and a disposal by the person ceasing to be entitled to that interest, and
- the **variation** of a chargeable interest is an acquisition of a chargeable interest by the person benefiting from the variation, and a disposal of a chargeable interest by the person whose interest is subject to or limited by the variation

24.2 A person who acquires a chargeable interest that consists of or includes a dwelling is treated as acquiring the interest on the effective date of the acquisition.

24.3 A person who disposes of a chargeable interest that consists of or includes a dwelling is treated as ceasing to be entitled to the interest on the effective date of the disposal.

24.4 If a person's acquisition and disposal of a chargeable interest are completed on the same day, then

- the person's acquisition of the interest is ignored if it precedes the disposal, and
- the person's disposal of the interest is ignored if it precedes the acquisition

24.5 The **effective date** of an acquisition or disposal of a chargeable interest is the date on which the acquisition or disposal is completed.

### **25 Contract and conveyance FA13/S122/S123**

25.1 Where a property changes hands in a transaction involving a contract followed by a conveyance, the ATED rules broadly follow the equivalent rules for SDLT except that they make separate provision for a purchaser and a vendor.

- 25.2 Entering into a contract does not, in itself, amount to the acquisition or disposal of a chargeable interest for ATED purposes.
- 25.3 However, if the contract is 'substantially performed' without having been completed, that substantial performance is treated as the completion of the acquisition and disposal provided for by the contract and any subsequent completion (whether or not between the original parties to the contract) is disregarded for this purpose.
- 25.4 'Substantial performance' for ATED purposes has the same meaning as in FA03/S44 – see SDLTM07750 onwards for further guidance.

[SDLTM07750 – Scope: When is SDLT chargeable: Contracts and substantial performance: Substantial performance at completion FA03/S44\(3\)](#)

- 25.5 If at any time between substantial performance and completion the contract is rescinded or annulled, or the performance of the contract is terminated for any other reason, the chargeable interest is treated as having been disposed of by the purchaser, and re-acquired by the vendor, at that time.
- 25.6 If at any time between substantial performance and completion the contract is varied or partially rescinded, so that it now transfers a different chargeable interest, the original chargeable interest is treated as having been disposed of by the purchaser, and re-acquired by the vendor, and the contract relating to the new chargeable interest is deemed to be substantially performed, at that time.
- 25.7 This also applies where the parties to the contract proceed as if they had varied the terms of the contract, regardless of whether the contract was actually varied.
- 25.8 For the purposes of these provisions a contract includes any agreement and a conveyance includes any instrument.

## **New dwellings, conversions, demolition etc**

### ***26 New dwellings and dwellings produced from other dwellings FA13/S124/125***

- 26.1 Where a dwelling is newly constructed or adapted between the normal valuation dates, special provisions operate to establish the taxable value of the single-dwelling interest (FA13/S102 - see [paragraph 9](#) of this guidance).
- 26.2 In this case the valuation date is the earlier of:
- the day on which the dwelling is deemed to come into existence for Council Tax or (in Northern Ireland) domestic rating purposes, and
  - the day on which the dwelling is first occupied

- 26.3 Where an existing dwelling or dwellings become a different dwelling or dwellings as a result of structural alteration of a building (or part of a building):
- the old dwelling or dwellings cease to exist, and
  - any new dwelling come into existence
- only when the conversion is completed.
- 26.4 In this case the valuation date for a single-dwelling interest in the new dwelling or dwellings is the day after the conversion is completed. The conversion is completed at the end of the day in which the dwelling is deemed to come into existence for Council Tax or (in Northern Ireland) domestic rating purposes.
- 26.5 Alternatively, if the date the dwelling is first occupied is before the date the dwelling is deemed to come into existence for Council Tax or (in Northern Ireland) domestic rating purposes then it is this earlier date that is to be used.
- 26.6 The filing date for returns under these rules is 90 days after the trigger date in paragraph 26.2 above. For example, if the dwelling is deemed to be a dwelling for the purposes of Council Tax (or domestic rating purposes in Northern Ireland) on 15 September 2015 then a return is needed by 13 December 2015.

## ***27 Demolition of dwellings FA13/S126/S127/S128***

- 27.1 Generally, where a building (or part of a building) that is a dwelling (the old dwelling) is demolished after 1 April 2013, any question as to whether a person has a single-dwelling interest in the dwelling, and any question as to the taxable value of such an interest, is determined as if the dwelling had not been demolished. However, the following exceptions apply.
- 27.2 Where the old dwelling is demolished and not replaced, the single-dwelling interest ceases to exist at the end of the day of demolition if a person entitled to the interest notifies an officer of Revenue and Customs that to the best of his or her knowledge there is no proposal to construct any dwelling or dwellings on the site of the old dwelling. A notification must be given in an ATED return, or by amending such a return. The notification should be made in the return through the use of the additional information e-mail address.
- 27.3 Demolition of a building is treated as occurring on the first day on which demolition has begun and on which, as a result, the building is no longer suitable for use as a dwelling.
- 27.4 Where the old dwelling is demolished and replaced by a new dwelling or dwellings on the same site, any question as to whether or not a person has a single-dwelling interest in the old dwelling or a new dwelling is determined on the assumption that the old dwelling ceases to exist, and the new dwellings come into existence, only when the rebuilding is completed.

**Example:** A Ltd owns a dwelling and has paid ATED for all chargeable periods since 2013-14. After successfully obtaining planning permission in

December 2018 it has the dwelling demolished in March 2019. Work to build the replacement dwelling commences on 1 May 2019 and is finished on 1 February 2020. The dwelling has a 'completion day' of 1 February 2020. However, the work had reached such a state that the non-qualifying individual took up occupation on 1 January 2020. Because that second date is earlier than the completion day the return of adjusted chargeable amount must use 1 January for the recalculation of the ATED payable. The old dwelling had an ATED valuation of £3.7m and the new dwelling is valued at £5.5m. Even though on 1 April 2019 there is no dwelling physically on the land (it having been demolished) A Ltd must still send in an ATED return by 30 April 2019 for the chargeable period 1 April 2019 - 31 March 2020 and pay ATED. A Ltd will then need to send in a return of adjusted chargeable amount to reflect the increase in the value of the new dwelling by 30 April 2020 by the same date they will also need to send in the return for 2020-21 again showing the new valuation and paying ATED for the band that the new dwelling falls into.

27.5 The day after the rebuilding is completed is a valuation date in the case of any single-dwelling interest in a new dwelling.

27.6 The rebuilding is completed at the end of:

- the day on which the new dwelling is deemed to come into existence for Council Tax or (in Northern Ireland) domestic rating purposes (the 'completion day'), or
- the day on which the last of the new dwellings is first occupied

whichever is the earlier.

27.7 **Where the old dwelling is demolished and replaced by a building other than a dwelling on the same site**, any question as to whether or not a person has a single-dwelling interest in the old dwelling is determined on the assumption that the old dwelling ceases to exist on the day after:

- the change of use is approved, or
- the old dwelling ceased to be occupied

whichever is the later.

## ***28 Conversion of dwellings to non-residential use FA13/S130***

28.1 Where a building (or part of a building) has been suitable for use as a dwelling and is altered so as to make it suitable for some other purpose, whether or not the building then ceases to be suitable for use as a dwelling is a question of fact.

28.2 However, if any planning permission or development consent is required for the alterations, the building will not be regarded as having become unsuitable for use as a dwelling unless this has been granted and the alterations have been made in accordance with it.

## **29 Damage to a dwelling FA13/S131**

- 29.1 There will be times when a dwelling has been damaged to such an extent that it will be temporarily unsuitable for use as a dwelling. In such cases it may be possible for the dwelling to no longer be within the scope of ATED. The situations where this may be possible are, though, limited and will not include wear and tear even where that wear and tear has reached such a point that the dwelling is no longer habitable.
- 29.2 A dwelling that has suffered damage will be considered not to be suitable for use as a dwelling for the purposes of ATED (only) if the first and second conditions are met.
- 29.3 The **first condition** is that the damage must be:
- accidental, or
  - otherwise caused by events beyond the control of the person entitled to the single dwelling interest
- 29.4 The damage must not have occurred during the course of work that is being carried out to alter the dwelling (or a building that forms part of it), and involves or is expected to involve making the dwelling unsuitable for use as a dwelling for 30 days or more.
- 29.5 The **second condition** is that as a result of the damage the building is unsuitable for use as a dwelling for at least 90 consecutive days.
- 29.6 Where both the first and the second condition are met then the period for which the building will be considered not to be suitable for use as a dwelling, for the purposes of ATED, will be used to establish the days in a chargeable period that the chargeable person owns 'a dwelling'. Furthermore, work carried out to restore the building to suitability will not be considered as construction or adaptation of a building for use as a dwelling.
- 29.7 In such cases the owner may make an amended return at the 90 day point (and no earlier) to reclaim ATED paid during that period when the building is considered not to be suitable for use as a dwelling. They may also claim repayment of ATED for the remaining part of the chargeable period. However, as soon as the dwelling again becomes suitable for use as a dwelling then the owner will be under an obligation to send in an ATED return as they are again in possession of a dwelling.
- 29.8 Where the building met the conditions before 1 April 2013 and past 1 April 2013 then the days before 2013 can be taken into account for the purposes of establishing the 90 day rule.
- 29.9 **Example one:** A Ltd owns a single dwelling interest that is within ATED in the £5-£10 million band. It has filed its return and paid ATED for the chargeable period 1 April 2016 - 31 March 2017. On 1 June 2016 a flood occurs rendering the building uninhabitable. By 15 August 2016 all remedial work has been carried out and the building is again suitable for use as a dwelling. The building is a dwelling throughout the 2016-2017 chargeable period as the period when it was not suitable for use as a dwelling was limited to 75 days and therefore the 90 day rule has not been met.

- 29.10 **Example two:** B Ltd has obtained planning permission for a considerable extension to be made to its dwelling, including the digging out of the cellar and a 3 storey extension to be added. The work is predicted to last 8 months, and for 6 continuous months that work will render the building unsuitable for use as a dwelling. Despite the fact that the dwelling will not be suitable for occupation for a period of greater than 90 days the activity taken to carry out the work is neither accidental nor caused by events beyond the control of the owner (they have, in fact, instructed that the work be carried out).
- 29.11 **Example three:** C Ltd owns a single dwelling interest that is within ATED in the £10-£20 million band. It has filed its return and paid ATED for the chargeable period 1 April 2015 - 31 March 2016. On 1 November 2015 a small plane crashes into the dwelling causing considerable damage rendering the building uninhabitable. By 15 August 2016 sufficient remedial work has been carried out and the building is again suitable for use as a dwelling. Work to return the dwelling to its former state was finally completed on 31 October 2016.

All the conditions for the building not to be treated as a dwelling have been met. The owner is therefore in a position to make an amended return for 2015-16 90 days after the date of the damage (i.e. on 29 January 2016). The amended return may claim a repayment for ATED from 1 November 2015 to 31 March 2016). C Ltd is not required to make an ATED return at the beginning of the 2016-17 chargeable period but is required to make a return by 14 September 2016 (i.e. 30 days after the date the building became suitable as a dwelling again).

## Reliefs

### ***30 Effect of Reliefs under Sections 133 to 150 FA13/132***

- 30.1 ATED is an annual tax – if the conditions for a liability are met at the beginning of a chargeable period the starting position is that the full amount of ATED must be paid. Various reliefs are provided, however, from ATED. These must be claimed by way of an ATED return and work on the basis of 'relievable days'. A relievable day exists where the conditions for a relief are met.
- 30.2 Relief may be claimed for:
1. Property Rental Businesses (see [paragraph 31](#) of this guidance) including preparation for sale etc (see [paragraph 32](#) of this guidance).
  2. Dwellings opened to the public (see [paragraph 35](#) of this guidance).
  3. Property developers including exchange of dwellings (see [paragraph 36](#) of this guidance).
  4. Property traders (see [paragraph 37](#) of this guidance).
  5. Financial institutions acquiring dwellings in the course of lending (see [paragraph 38](#) of this guidance).
  6. Occupation by certain employees or partners (see [paragraph 39](#) of this guidance).
  7. Farmhouses (see [paragraph 40](#) of this guidance).
  8. Providers of social housing (see [paragraph 41](#) of this guidance).



- 30.3 The numbers in the list above correspond with the relief code numbers that should be entered on the return where the taxpayer is claiming a relief.
- 30.4 There is a ninth relief code included in the return. This is 'other'. This code should not be used without HMRC having specifically stated that it is to be used. It is primarily included to provide flexibility to returns in the event that the Government decides to provide further reliefs. In the event that this occurs further guidance will be provided.
- 30.5 It should be noted that the legislation provides that relief is not available where a 'non-qualifying individual' is permitted to occupy the dwelling. Guidance on who is a non-qualifying individual can be found at [paragraph 34](#) of this guidance. The legislation does not have a special term for an individual who is not a non-qualifying individual. For the purposes of this guidance a person who is not a non-qualifying individual will be referred to as a 'qualifying individual'

### **31 Property Rental Businesses FA13/S133**

- 31.1 Relief is available from ATED where a single-dwelling interest is exploited as a source of rents or other receipts in the course of a **qualifying property rental business**. This is the relief that is available under section 133(1)(a).
- 31.2 Relief will also be available, however, where the single-dwelling interest is not currently generating receipts from the business if steps are being taken to rent the property without delay. Relief by meeting this condition will be relevant where a taxpayer first acquires a property but has not yet found a tenant or if there is a period of non-occupation after the previous occupant leaves and the landlord is seeking a new tenant. This is the relief that is available under section 133(1)(b).

#### **'Qualifying property rental business'**

- 31.3 In order for the relief to be claimable the person making the claim must be carrying on a qualifying property rental business. Such a business must meet two conditions to be a property rental business:
- the business must be a property rental business as defined in Chapter 2 of Part 4, CTA 2009, although the condition that the profits are chargeable to corporation tax is not part of the ATED legislation (see also PIM1020 onwards for more information), and
  - it must be carried on on a commercial basis and with a view to a profit

#### [PIM1020 – Introduction: what is a UK property business?](#)

- 31.4 The second test will exclude any rental activity which is not genuinely commercial. This needs to be examined by reference to the particular circumstances of each case – the key issue is that the property is being exploited in a business like manner to produce rent and result in a profit. For example, the following may suggest that a property rental business is not carried on on a commercial basis:

- the property is never marketed to the public through an independent agent
- the property is not managed by an independent agent (where the landlord does not have sufficient resources to undertake effective management of its properties directly)
- the property is not let on standard third party terms (including not being let at a commercial rent)
- the landlord does not enforce its legal rights (for example if the property is damaged by the tenant, or in respect of consents for works and alterations)
- there are considerable or repeated periods where the property is left unoccupied
- the business is funded by debt at level or on terms that a third party bank would not offer. This could include both very low or very high rates of interest on the debt.

31.5 It should be noted that 'rents' for these purposes is subject to certain exclusions set out in section 605(2), CTA 2010 (which includes rents in respect to pipelines, cables, masts etc).

#### **'Steps'**

31.6 Where a dwelling is not generating rents the taxpayer may still be able to claim relief if they are taking steps to rent the property out. The sorts of activities that would constitute steps for the purposes of this relief would include:

- appointing an lettings agent
- re-decoration
- more substantial alterations than simply re-decoration, and
- purchasing furniture

31.7 However, those steps must reasonably be expected to lead to the letting of the property. For example, if the dwelling is located in Knightsbridge, advertising it in Newcastle will not meet the test of steps being taken to find a tenant. Similarly, advertising the property at a rent that is unlikely to be achieved will again not meet the test of steps being taken to find a tenant.

#### **'Without undue delay'**

31.8 Furthermore, those steps must be taken so as to ensure that the dwelling will generate rents without undue delay. A delay in generating rent will though be justified if that results from commercial considerations or was unavoidable.

31.9 Delay will be considered unavoidable if it is caused by factors wholly outside the control or influence of the owner of the property: for example, if it is severely damaged in a fire, or extensive works need to be undertaken to make the property inhabitable or to comply with legal requirements.

31.10 Commercial considerations should be interpreted in a common sense manner – there must be objective business reasons for the delay – and this question will need to be judged on each set of facts. It will, for example, include initial

works undertaken by the landlord after purchase (or the departure of a tenant) to improve the property such as repairs or redecorating.

- 31.11 In any case, a taxpayer will need to be able to support their claim for relief with objective evidence that should be able to:
- demonstrate the commercial considerations that are causing the delay, and
  - when they expect to start to be able to exploit the property to generate income
- 31.12 Where a company (for example an estate which owns a large number of dwellings in central London) manages a large number dwellings and states that market conditions are such that they propose delaying letting the property for several months, they may have sufficient expertise and internal knowledge to be able to justify this conclusion. Where a company owns a single-property and lacks similar levels of expertise, especially if there have been periods of non-qualifying occupation, we would expect the owner to have independent evidence to support their statement (for example, a report from a surveyor or estate agent recommending that the property is not let for several months due to a likely improvement in the local market). In most circumstances, the longer the period of non-exploitation, the more evidence will be required to show that the delay was commercially justified.

## **32 Non-occupation – preparation for sale, conversion etc FA13/S134**

- 32.1 Where a property satisfied the conditions for the property rental business relief but that rental business has ceased and the property is unoccupied relief from ATED is still available in certain circumstances:
- 1) where the single-dwelling interest is to be sold without undue delay
  - 2) where the dwelling is to be demolished without undue delay and, if it is intended that a new dwelling will be constructed on the same plot, that new dwelling is intended to be used in a way that will be relieved from ATED
  - 3) where the dwelling is to be converted into a new dwelling and that new dwelling is intended to be used in a way that will be relieved from ATED
  - 4) where the dwelling is to be converted into a non-residential building without undue delay
- 32.2 In each case the property must be owned by the same person who claimed relief for running the property rentals business. Where that business was carried on in partnership, the dwelling must be owned by a person who was a partner on the last day in respect of which the relief was given.
- 32.3 It should also be noted that relief under these rules is only allowed if all of the days between the last day of the property being occupied by a qualifying individual and the day from which relief under these provisions is claimed was relievable under the property rental business relief. That is to say, if a non-qualifying individual was permitted to occupy the dwelling in this period then this relief will not be available.

- 32.4 Note: only certain reliefs from ATED are relevant when looking to the use of the new dwelling under circumstances (2) and (3). These are: property rental businesses, dwellings open to the public, dwellings occupied by certain employees or partners and farmhouses.
- 32.5 **Example one:** A Ltd purchased a property on 1 June 2014 and met the property rental business relief conditions (either by having a qualifying individual as a tenant or by taking steps to find new qualifying individuals as tenants during void periods). The last qualifying tenant left on 1 August 2020 and the dwelling was again re advertised for rent. On 1 November 2020 A Ltd decided to sell the property instead and asked its agent to advertise the property for sale. On 28 February 2021 the sale contract was completed. A Ltd will have claimed interim relief under the property rental business relief on its 2020/21 ATED return (due 30 April 2020). It will qualify for relief in 2020/2021 either under property rental business relief or preparation for sale, demolition etc relief. From 28 February 2021 A Ltd has until 31 March 2022 to send in an amended return to reflect the sale of the dwelling on 28 February 2021.
- 32.6 **Example two:** B Ltd purchased a property on 1 August 2015 and met the property rental business relief conditions (either by having a qualifying individual as a tenant or by taking steps to find new qualifying individuals as tenants during void periods). The last qualifying tenant left on 1 February 2022 and the dwelling was again advertised for rent. On 1 May 2022 B Ltd permitted a non-qualifying individual to occupy the dwelling. That individual left on 1 December 2022 when B Ltd decided to sell the property. On 15 September 2023 the sale contract was completed. B Ltd will have claimed interim relief under the property rental business relief on its 2022-23 ATED return (due 30 April 2022) as steps were being taken to rent the property out.
- 32.7 However, the permission for a non qualifying individual to occupy the property will mean that a further return will be required for the 2021-22 to show an ATED liability to reflect the position after 1 February 2022 to 31 March 2022 on the 'look back' provisions, and for 2022-23 under the 'look back' and 'look forward' provisions (see paragraph 33 of the guidance below). These 2 further returns must be delivered by 30 April 2023. The further return for 2021-22 will include an amount of tax payable for the period 1 February 2022-31 March 2022. The further return for 2022-23 will include tax payable for the whole of the period. The return for 2023-24 will also need to be made by 30 April 2023 as well and no relief will be available due to the permission that a non-qualifying individual could occupy the dwelling. From 15 September 2023 onwards B Ltd can send in an amended return for 2023-24 to reflect its disposal of the dwelling and claim a repayment of the ATED overpaid.

### ***33 Non-qualifying occupation: look-forward and look-back FA13/S135***

- 33.1 Relief is not available on any day where a non-qualifying individual is permitted to occupy a dwelling. In addition, relief will not be given on any subsequent day in that or any of the three subsequent chargeable periods under this provision until a qualifying individual has rented the property as part of the property rental business. In addition, if a non-qualifying individual is permitted to occupy the dwelling, relief may be withdrawn for the earlier part

of that chargeable period and for the preceding chargeable period. However, this will only apply where the dwelling was not actually occupied by a qualifying individual.

33.2 A 'non-qualifying individual' is defined in section 136 and guidance is at part 34 of this guidance.

33.3 **Example** - A Ltd carries out a property rentals business. This is carried on a commercial basis and with a view to a profit and the conditions for the relief are otherwise met.

From 1 April 2014 - 1 August 2014, A Ltd was carrying out repair and decoration works on a dwelling worth over £2m which it intended to exploit as part of its property rental business. It then marketed the dwelling and it was let to Ms P, a qualifying individual, for a year from 1 October 2014. When Ms P's lease expires on 30 September 2015, A Ltd seeks another tenant. As this is taking some time, Mr V, a non-qualifying individual, is permitted to occupy for the month of January 2016, but vacates on the last day of the month. Eventually, a new tenant is found and on 1 March 2016, Miss W, a qualifying individual, enters into occupation under another 12 month lease.

**1 April – 30 September 2014** – although a qualifying tenant is not in occupation of the property, it is held by A Ltd with an intention to exploit it as a source of rents in the course of a qualifying property rental business (and A Ltd is taking steps by undertaking works on and marketing the property to ensure that this takes place without delay).

**1 October 2014 – 30 September 2015** – the dwelling is being exploited as a source of rents in the course of a qualifying property rental business and, as Ms P is not a 'non-qualifying individual', relief from ATED is available.

**1 October 2015 – 31 December 2015** – the initial position is that relief will be available for this period. Although A Ltd is not exploiting the dwelling as a source of rents (as it is unoccupied), it intends to do so and is actively taking steps to achieve this without delay.

**1 January 2016 – 31 January 2016** – as a non-qualifying individual is permitted to occupy the property, the relief is not available. This is regardless of whether Mr V is informally let into occupation or if he enters into a formal lease and pays a market rent. As he has been let into occupation this triggers the 'look back' and 'look forward' restrictions on relief.

#### **Look back**

Relief will be withdrawn for the chargeable period in which the non-qualifying individual is permitted to occupy, and the preceding chargeable period. On these facts this has the potential to withdraw relief from 1 April 2014. However, the withdrawal does not look back further than a day when a qualifying tenant was renting the property as part of the property rentals business. This means that relief will only be withdrawn for the period 1 October – 31 December 2015 when the dwelling was not rented out.

**1 February – 28 February 2016** – normally, as A Ltd is taking steps to rent the property without delay relief would be available. However, as the property has been occupied by a non-qualifying individual, the **Look forward** restriction operates and potentially restricts relief for the rest of this

chargeable period as well as the following three. This restriction only applies until the dwelling is let as part of the rentals business to a qualifying individual. This takes place on 1 March 2015 and so the restriction only bites for a further month.

**1 March 2016 – 31 March 2016 (the end of the chargeable period)** – As the property is being exploited as a source of rents in the course of a qualifying property rentals business relief is available, even though a non-qualifying individual was let into occupation in the same chargeable period. Miss W's tenancy has the effect of ending the 'look forward' restriction on relief.

The return position for 2015-16 is that by 30 April 2015 B Ltd will have made a return claiming interim relief for the whole of the year. This is because on the day the return was made (say 28 April 2015) the dwelling was being used in a qualifying property rental business. However, the various activities that have occurred during 2015-16 mean that by 30 April 2016 a further return is required for the chargeable period 2015-16 to show a liability to pay ATED for the period 1 October 2015 to 29 February 2016. At the same time the 2016-17 return is due but, as the dwelling is being exploited in a qualifying property rental business again, interim relief can be claimed for the whole of that chargeable period.

### **34 Meaning of Non-Qualifying Individual FA13/S136**

34.1 Many of the reliefs are restricted where a 'non-qualifying individual' is permitted to occupy a dwelling. A non-qualifying individual means:

- 1) an individual who is entitled to an interest
- 2) an individual ('a connected person') who is connected with a person entitled to the interest
- 3) if a person is entitled to the interest as a member of a partnership, any person who is connected with a partner in that partnership
- 4) an individual (the 'relevant settlor') who is a settlor of a trust of which a trustee is connected with a person entitled to the interest
- 5) the spouse or civil partner of a connected person or a relevant settlor
- 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
- 7) a relative of the spouse or civil partner of a connected person or of a relevant settlor
- 8) the spouse or civil partner of a person falling within paragraph (7)
- 9) an individual who is a major participant in a collective investment scheme or is connected with a major participant in a relevant collective investment scheme

This covers a wide range of individuals and the operation in relation to each is best illustrated with examples.

34.2 **An individual who is entitled to an interest.**

This will apply where a single-dwelling interest within the charge to ATED is jointly owned by an individual and a person within the scope of tax. Here joint

ownership of the single dwelling interest will also include a separate jointly owned interest that may, with other interests, be aggregated into a single-dwelling interest. That individual will be a non-qualifying individual in respect of that dwelling and so, if permitted to occupy the dwelling, will restrict the availability of relief.

#### 34.3 **An individual ('a connected person') who is connected with a person entitled to the interest**

'Connection' for these purposes is determined by reference to section 1122, CTA 2010 (see [paragraph 55](#) of this guidance). This is a wide test but is most likely to be relevant where a single-dwelling interest is held by a company. A company will be connected with any individual who controls that company (or any individual who controls a company with persons who are, in turn, connected to that individual such as family members).

**Example one:** B Ltd owns a single-dwelling interest. B Ltd is wholly owned by Mr A (or by Mr A and his spouse or relatives). Mr A will be a non-qualifying individual in respect of that interest and, if permitted to occupy, relief will not be claimable and if relief has previously been claimed then the look forward and look back rules in section 135 will be triggered leading, in many cases, to relief being withdrawn.

#### 34.4 **If a person is entitled to the chargeable interest as a member of a partnership, any person who is connected with a partner in that partnership**

**Example two:** B Ltd owns a single-dwelling interest. B Ltd is wholly owned by Mr A. A partnership has several members, including Mr A and B Ltd. B Ltd is entitled to a single-dwelling interest as a member of that partnership (but, for whatever reason, Mr A is not so entitled). As Mr A is connected with B Ltd, he will be a non-qualifying individual for these purposes. Note that this specific rule is not affected by the provisions in sections 136(6) (see also [paragraphs 34.11](#) below).

#### 34.5 **A relevant settlor**

This is relevant where a trustee - in that capacity - is connected with a person who is entitled to a single-dwelling interest. The settlor of that trust will be a 'relevant settlor' and will be a non-qualifying individual.

**Example three:** Ms C settles £10m on trust. W Bank Ltd acts as trustee. W Bank Ltd uses the trust funds to incorporate and fund a company, X Ltd (with X Ltd being wholly owned by W Bank Ltd as trustee). X Ltd then acquires a dwelling worth more than £2m.

On these facts Ms C will be a non-qualifying individual:

- Ms C is the settlor of a trust
- the trustee of that trust (W Bank Ltd) controls, and is therefore connected with, X Ltd
- X Ltd is entitled to a single-dwelling interest with a taxable value of over £2m and which is therefore within the charge to ATED. Any settlor of the trust, will therefore be a non-qualifying individual

**34.6 The spouse or civil partner of a connected person or a relevant settlor**

This rule ensures that the spouse or civil partner of Mr A in example 1, and also the spouse or civil partner of Ms C in example 3 are treated as non-qualifying individuals.

**34.7 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**

This rule will ensure that a relative of Mr B in example 1, and also the spouse or civil partner of Ms C in example 3 are treated as non-qualifying individuals. Relative is defined in section 1123 CTA 2010 (see [paragraph 55](#) of this guidance). Broadly it is a 'brother, sister, ancestor or lineal descendant'. So the sibling of Mr B or Ms C, or their children, grandchildren and so on will also be non-qualifying individuals.

**34.8 The relative of the spouse or civil partner of a connected person or of a relevant settlor**

Again, this extends the non-qualifying individual test beyond Mr A (from example 1) and Ms C (from example 3), to include people who are related to their spouse or civil partner.

**Example four:** So, taking the facts from example 1 B Ltd owns a single-dwelling interest. B Ltd is wholly owned by Mr A. Mr A's civil partner, Mr Z, will be a non-qualifying individual under rule 5 (as the spouse or civil partner of a connected person or relevant settlor). Mr Z's brother and his family are permitted to occupy the dwelling. Rule 7 (as a relative of the spouse or civil partner of a connected person or of a relevant settlor) will therefore prohibit claims for relief or may trigger the look back and look forward rules as Mr Z's brother (as well as his other siblings, parents, grand-parents, children and grandchildren and remoter issue) is treated as a non-qualifying individual.

**34.9 The spouse or civil partner of a person falling within paragraph (34.8)**

This extends the non-qualifying rules further, so that the spouse or civil partner of Mr Z's relatives (from example 3) will also be treated as non-qualifying individuals.

**34.10 An individual who is a major participant in a collective investment scheme or is connected with a major participant in a relevant collective investment scheme**

This rule only applies to collective investment schemes which hold a single-dwelling interest. A person who participates in a collective investment scheme will be a 'major participant' if they are entitled to:

- at least 50 per cent of either all the profits or income arising from the scheme or of any profits or income that are to be distributed to the participants in the scheme, or
- 50 per cent or more of the assets that would be available for distribution amongst the participants in the collective investment scheme on its winding up



If an individual (or a company they control) is a major participant in a scheme, that individual will be 'non-qualifying' in respect of any single-dwelling interest held for the purposes of the scheme.

- 34.11 **Exception to Connected Persons rule** - the normal rules for connected persons contains, in section 1122(7) CTA 2010, a rule that a partner in a partnership is connected with:
- (a) any partner in the partnership
  - (b) the spouse or civil partner of any individual who is a partner in the partnership, and
  - (c) a relative of any individual who is a partner in the partnership

For ATED this rule will not apply when identifying a non-qualifying individual. However, it should be noted that this is an express exception to that rule and it is only in relation to interests owned by partnerships that meet the ownership condition in section 94(5) FA 2013. Its effect is to ensure that connection between persons otherwise with no familial or trust connection is not established through business partnerships.

### ***35 Dwellings Opened to the Public FA13/S137***

- 35.1 Relief is available from ATED where a single-dwelling interest is exploited as a source of income in a qualifying trade which offers the public the opportunity to make use of, stay in or otherwise enjoy the dwelling as customers of the trade on at least 28 days of the year. For the single-dwelling interest to be exploited as a source of income that income must be related to the dwelling and not be purely incidental to a visit to the dwelling (for example for a business meeting with the person connected to the owning entity).
- 35.2 Relief will also be available where a single-dwelling interest is not yet being exploited provided there is an intention to do so and steps are being taken so that the trade can begin without delay (except so far as any delay is justified by commercial considerations or cannot be avoided). This is the case even if the trade in question has not commenced. 'Without delay (except so far as a delay is justified by commercial considerations or cannot be avoided)' has the same meaning as 'without undue delay' as set out in [paragraphs 31.8 - 31.12](#) of the guidance (property rental businesses).
- 35.3 Relief may therefore be available where a house is acquired with the intention to exploit some of its rooms as a conference venue, even where that trade has not started. Steps must be taken to do this without delay, for example undertaking works to decorate, repair or alter the house so it is fit for its intended use.
- 35.4 One important point to note in relation to this relief is that the condition that a non-qualifying individual must not occupy the dwelling is absent. This is intentional and is designed to provide that the relief will be available in situations where the occupant is connected to the owning entity. Situations where this is most obviously likely to occur are where the property is a historic house which opens to the public in order to generate income, perhaps towards the upkeep of the property.

## **'Qualifying trade'**

35.5 For the purposes of this relief a trade will only qualify if it:

- involves offering the public the opportunity to make use of, stay in or otherwise enjoy a significant part of the interior of the dwelling as customers of the trade on at least 28 days in a year; and
- is carried on on a commercial basis and with a view to the realisation of profits.

35.6 For the purposes of this relief the trade is to be considered from the point of view of what the actual commercial activities undertaken are and they must be carried on so as to generate income, and a view to profit.

## **Significant part of the interior**

35.7 It is not necessary for the entire dwelling to be exploited in the trade and, for these purposes, 'significant' is determined by reference to the size of the area made available to the public (relative to the size of the dwelling), and its nature and function. Although only a minority of the rooms or area of a dwelling may be used in the trade, if these are sufficiently important in the context of a particular dwelling they will comprise a 'significant part' of the interior.

35.8 For example, a stately home may contain many rooms. If the main state rooms are opened to the public it will be likely that this will comprise a 'significant part of the interior' despite comprising less than half the total floor area and number of rooms. In terms of nature and function, these rooms are likely to form a 'significant' part of the interior.

35.9 Where the gardens to the house are open to the public, who are allowed access to a small or unimportant part of the interior (for example, to access toilets) this will not be sufficient to relieve the dwelling from charge.

## **Commercial basis with a view to the realisation of profits**

35.10 The trade must be carried on a commercial basis and with a view to the realisation of profits.

35.11 If a trade is carried on in such a way as to try and discourage people taking advantage of the opportunity to use the dwelling (for example, by making it practically difficult or available only on days or at times that are unlikely to be used) this will not be carried on a 'commercial basis'.

35.12 It should be noted that only the particular trade must be carried on in this manner. If a historic house is open to the public or available as a wedding venue, it is that activity which must be carried on commercially and with a profit seeking motive. The relief is intended to be claimable where the owner is operating a trade to subsidise the running costs of a historic house.

## **Opportunity to the public to enjoy etc**

35.13 The opportunity must genuinely be available to the public on 28 separate days in each chargeable period. However, the opportunity need not be taken

on 28 days. For example, a dwelling may be open as a wedding venue. If, in one year, only 20 weddings on separate days are held at the house but it was available for hire on every Friday and Saturday, this condition would still be met. If, however, a dwelling becomes exploited part way through a chargeable period such that it will not be available for 28 days in that chargeable period, the relief will still be available provided there is an intention to make it available for at least that number of days in each subsequent chargeable period and steps were being taken for the earlier part of the year to open to the public.

- 35.14 If, consistently, the dwelling is used on substantially fewer than 28 days over several chargeable periods, this may indicate that the opportunity is not truly available for at least 28 days or that the trade is not being run on a commercial basis. In such circumstances the facts, and the evidence in support of those facts, will be very important.
- 35.15 The normal meaning of 'public' will apply in this context, so, the opportunity must be available to everyone (subject to reasonable commercial and objective criteria where appropriate). Where the opportunity is only available to persons connected or familiar with the owner of the single-dwelling interest (or persons connected to them) and that access to the dwelling is only as a result of personal invitation, this will not amount to 'the public'. However, where a connected person takes advantage of the opportunity in their capacity as a member of the public rather than because of that connection then they will be considered to be a member of the public.
- 35.16 **Example one:** The trustees of the A Trust own A Ltd which in turn owns a single-dwelling interest worth £15 million. A Ltd has, for many years opened the dwelling to the public for the months of April through to October for 7 days a week. It is also available throughout the year for other privately organised events such as weddings, conferences etc. It meets the conditions of the relief and the fact that some of the beneficiaries of the trust are resident in the dwelling does not impact upon A Ltd's ability to claim this relief.
- 35.17 **Example two:** B Ltd owns a single-dwelling interest worth £7 million. It consists of a number of buildings (including separate dwellings) as well as the main house. B Ltd conducts a wedding business from the out-buildings (a stable block converted to host receptions, it contains a number of rooms, kitchen and bathroom facilities) and also provides accommodation for the wedding guests in a number of other dwellings and buildings that have been adapted for this purpose. B Ltd advertises its business extensively and regularly hosts weddings on 20 days per year (the number is relatively small because of the size and location of the property). It is also open to group bookings on a further 21 days in the year where B Ltd charges a fee for the groups to have access to the main house and on these days it provides refreshments in the stable block.

Whilst no single activity meets the 28 day rule of open to the public B Ltd will still qualify for relief because its business activities are run on a commercial basis and with a view to profit and, in total, they meet the 28 day rule, relief will therefore be due.

- 35.18 **Example three:** C Ltd owns a single-dwelling interest which it opens to the public for only 15 days per annum permitting the public to have access to the dwelling and the gardens. For another 10 days C Ltd opens the single-

dwelling interest to the public but on these days the profit made is given to a local charity under the gift aid rules. For a further 5 days in the year C Ltd permits local schools and groups to use the garden and grounds for sports activities and competitions. Access to the interior is also permitted on these days and tours are run for those interested. C Ltd makes no charge on these 5 days. This pattern is fixed.

Relief cannot be claimed as whilst the public has access to the dwelling for a total of 30 days per annum the trade can only be considered to be operating on 25 of those days (the fact that the profit is gift aided to the charity on the 10 'charity days' does not affect the fact that it was run on a commercial basis with a view to profit).

- 35.19 **Example four:** D Ltd permits the public to have access to its renowned gardens and grounds, a gardening shop (including a café) and toilet facilities are provided to the public. However, as access to the interior of the dwelling is not permitted no relief may be claimed.

### **36 Property Developers FA13/S138/S139**

- 36.1 Relief from ATED may be claimed where a single-dwelling interest is held by a person carrying on a property development trade (the 'property developer'), and the interest is held so that it will be developed and resold as part of the property development trade. Whilst the interest must be held exclusively for this purpose the relief under these provisions (rather than any other relief provisions) is still available if the property is held for the purposes of the property developer trade but is rented out prior to resale.
- 36.2 A property development trade is defined as one that consists of or includes buying, and developing or redeveloping for resale, land and property. This definition will cover a range of activities from the refurbishment of substantially the whole of a property (including, for example fitting new bathrooms, kitchens, etc) prior to resale, extensive works on the property including extensions etc, or the demolition of the property and replacement with one or more new residential units or a commercial property. It will also include the sale of land interests out of the land acquired, for example, smaller parcels of land or the granting of leases.
- 36.3 It will be a question of fact as to whether a property developer's trade is one of property development as opposed to property trader. An intention to carry out insubstantial or insignificant redecoration prior to a quick onward sale is not likely to be indicative of a property development business, and may be more indicative of a property trading business (see [paragraph 37](#) of this guidance below).
- 36.4 A property development trade must be carried on on a commercial basis and with a view to a profit. Again whether a trade is carried on on a commercial basis will need to be established by reference to all the facts.
- 36.5 **Example one:** A Ltd was incorporated 15 years ago and carries out a number of property development activities. It has purchased dwellings which it has redecorated prior to resale, it has acquired commercial property that it has

demolished and constructed dwellings in its place, it has purchased residential land and built commercial units and it has acquired bare land and has built commercial and residential properties. It is clearly carrying on a property development trade and it is carrying that trade on on a commercial basis. It acquires a house costing £4 million and intends to knock it down and build a number of smaller dwellings (if it can obtain planning permission). Otherwise it intends to renovate the house and market it for sale. From acquisition A Ltd may claim relief from ATED. If the property is demolished then the rules in section 128 FA 2013 will apply (see [paragraph 27](#) of this guidance).

- 36.6 **Example two:** B Ltd was incorporated 4 weeks ago to carry on a property development trade. It has just purchased its first property, a dwelling costing £2.5 million. It intends to substantially redecorate it (including new bathrooms and a new kitchen) prior to resale. It is carrying on a property development trade from that point with the intention to generate profits. From acquisition B Ltd may claim relief from ATED.
- 36.7 **Example three:** C Ltd is a company with a long history of property development. It has also, over the last couple of years, expanded its activities and now has a property rental business as well as its property development trade. It acquired a dwelling costing £6million, with the intention that following its redecoration, it will be sold. However, it has difficulty finding a buyer at a price that would generate a profit and a decision is made to rent the property out until market conditions improve. As the intention is still to sell the property and the property was acquired for the property development business the relief should still be claimed as property development relief. However, if C Ltd were to decide to transfer the property to its property rental business (i.e. move the property from revenue account to capital account) then the property rental business relief should be claimed in following years.

### **Property developers – exchanges FA13/S139**

- 36.8 Property developers will also be able to claim relief from ATED when they acquire a single-dwelling interest, known as the 'returned interest', as part of a 'qualifying exchange'.
- 36.9 A 'returned interest' is a single-dwelling interest that is owned or acquired by the property developer in the course of a property development trade and it was acquired as part of a qualifying exchange. The property developer's acquisition of the interest is called the 'reverse acquisition'.
- 36.10 A 'reverse acquisition' occurs **only** where a property developer acquires (i.e. is the 'purchaser') the single-dwelling interest:
- by way of transfer
  - the 'vendor' of the interest acquired by the property developer acquired a new dwelling from the property developer, and,
  - the acquisition by the property developer and the acquisition by the other person amount to an exchange
- 36.11 A 'new dwelling' is one that has been constructed and not previously occupied or has been adapted to be a single dwelling but has not been occupied since the work required to adapt it has been completed. A new dwelling is therefore one that that has been purchased by the property

developer and has either been constructed and not occupied or has been adapted for use as a dwelling and not occupied since it was adapted.

- 36.12 **Example one:** A Ltd, a property developer, has developed a block of twenty flats all of which are valued at between £3 million and £20 million. It has sold Flat 6 to Mr Z for £4.5 million and contracts for the sale have been completed. Mr Z after taking possession of the flat decides that he would rather have acquired a bigger flat on a higher floor. A Ltd still has Flat 15 available for sale at a cost of £10 million. Mr Z agrees to buy this flat and asks that A Ltd accept £5.5 million cash, Flat 6, and 50 per cent of A Ltd's SDLT liability on its acquisition of Flat 6 as consideration. A Ltd agrees. There is therefore a reverse acquisition as A Ltd is acquiring, by way of transfer, Flat 6 and Mr Z has acquired a new dwelling (Flat 15) from the property developer. A Ltd will therefore be able to claim relief from ATED under these exchange of dwellings rules.
- 36.13 **Example two:** B Ltd, a property developer, has developed a block of twenty flats all of which are valued at between £3 million and £20 million. Ms Y agrees to buy Flat 9 for £6.5 million and asks that B Ltd accept £3.5 million cash, and her current home a Victorian terraced house (independently valued at £3.7 million) as consideration. B Ltd agrees. There is therefore a reverse acquisition as B Ltd is acquiring, by way of transfer, the Victorian terraced house, and Ms Y has acquired a new dwelling (Flat 9) from the property developer. B Ltd will therefore be able to claim relief from ATED under these exchange of dwellings rules.
- 36.14 **Example three:** C Ltd specialises in purchasing and redeveloping Grade II and Grade II\* houses for resale. It has completed its development of a house built in 1810 and has found a buyer for the house. The buyer, Mr and Mrs X, offer the asking price of £3.5 million but have difficulty selling their home which has a market value of £2.3 million. They cannot complete the purchase without selling their current home. C Ltd agrees to accept Mr and Mrs X's current home and £1.4 million in cash. C Ltd will not be able to claim relief from ATED under the exchange of dwellings rules because the house they have sold to Mr and Mrs X is not a new dwelling nor has it been newly adapted for use as a single dwelling. They may, however, be able to claim relief under the core property developer relief (section 138 FA 2013) if they meet the conditions for that relief in relation to Mr and Mrs X's former home.

### **Permission for a non-qualifying individual to occupy the dwelling**

- 36.15 As for property rental businesses, relief is not available on any day when a non-qualifying individual is permitted to occupy a dwelling (either where the dwelling was acquired for development and sale or acquired by a reverse acquisition). In addition, relief will not be given on any subsequent day in that or any of the three subsequent chargeable periods where there is continuity of ownership. In addition, if a non-qualifying individual is permitted to occupy the dwelling, relief may be withdrawn for the earlier part of that chargeable period and for the preceding chargeable period. However, in the event that a qualifying individual is in occupation on one of the earlier days (and the property rental business condition that the single-dwelling interest is actually being exploited as a source of rents or other receipts is met (S133(1)(a) FA 2013), then the withdrawal of the relief previously claimed for earlier days is limited to the point that this occupation by a qualifying individual ceased.

- 36.16 A 'non-qualifying individual' is defined in section 136 and guidance is at [paragraph 34](#) of this guidance. [Paragraph 30.5](#) of this guidance provides a definition of a 'qualifying individual'.
- 36.17 The rules for the look back and look forward rules will operate in a very similar way to the property rental business rules (see [paragraph 33](#) of this guidance). The key difference is in relation to the look forward rules where occupation of the dwelling by a qualifying individual will not stop the look forward provisions operating unless the single-dwelling interest is exploited as a source of rents and would qualify for relief under section 133 FA 2013 – property rental business relief.

### **37 Property Traders FA13/S141/S142**

- 37.1 Relief from ATED may be claimed where a single-dwelling interest is held by a person carrying on a property trading business (the 'property trader'), and the interest is held as the stock of the business and for the sole purpose of resale in the course of that property trading business.
- 37.2 A property trading business is defined as one that consists of or includes activities in the nature of a trade of the buying and selling of dwellings. For the business to amount to a trade it must be carried on a commercial basis and with a view to a profit. Whether that trade is carried on a commercial basis will need to be established by reference to all the facts. If a company purchases a property in the expectation that in a few years time it will be able to sell the property for a higher price that may **not** be sufficient to make the activity amount to a trade. It may instead be an investment activity for which relief is not provided. For more information on trading see HMRC's Business Income Manual (BIM20000 onwards).

#### [BIM20000 – Trade: contents](#)

- 37.3 **Example one:** A Ltd carries on a trade where it purchases dwellings looking to make a profit on the resale. It provides owners with the opportunity to sell their dwelling to it in the event that they need to dispose of their property quickly and with certainty. Examples of the situations where A Ltd will make purchases of such dwellings include: acquisitions of dwellings from an individual acquiring a new dwelling, acquisition of a dwelling from an individual in order to facilitate a chain of transactions and acquisition of a dwelling from an individual to facilitate the relocation of an employment, and acquisitions of dwellings to sell for profit as part of a trade (rather than for gain).
- 37.4 In some transactions relief will be available not only from ATED under these rules and the higher rate of SDLT under the provisions of paragraph 5 Schedule 4A FA 2003 (relief from the 15 per cent rate) but also, where the relevant conditions are met, the transaction may be relieved under the provisions in Schedule 6A FA 2003 (relief for certain acquisitions of residential property) see SDLTM21010.

#### [SDLTM21010 – Reliefs: Certain acquisitions of residential property](#)

### **Permission for a non-qualifying individual to occupy the dwelling**

- 37.5 As for property rentals businesses, relief is not available on any day when a non-qualifying individual is permitted to occupy a dwelling. In addition, relief will not be given on any subsequent day in that or any of the three subsequent chargeable periods where there is continuity of ownership. If a non-qualifying individual is permitted to occupy the dwelling, relief may be withdrawn for the earlier part of that chargeable period and for the preceding chargeable period as well.
- 37.6 However, in the event that a qualifying individual is in occupation on one of the earlier days (and the property rental business condition that the single-dwelling interest is actually being exploited as a source of rents or other receipts is met (S133(1)(a) FA 2013)), then the withdrawal of the relief previously claimed for earlier days is limited to the point that this occupation by a qualifying individual ceased.
- 37.7 A 'non-qualifying individual' is defined in section 136 and guidance is at [paragraph 34](#) of this guidance. [Paragraph 30.5](#) of this guidance provides a definition of a 'qualifying individual'.
- 37.8 The rules for the look back and look forward rules will operate in a very similar way to the property rental business rules (see [paragraph 33](#) of this guidance). The key difference is in relation to the look forward rules where occupation of the dwelling by a qualifying individual will not stop the look forward provisions operating unless the single-dwelling interest is exploited as a source of rents and would qualify for relief under section 133 – property rental business relief.

### **38 Financial Institutions Acquiring Dwellings in the Course of Lending FA13/S143/S144**

- 38.1 Relief from ATED may be claimed by a financial institution that owns the single-dwelling interest. The relief is intended to provide relief from the charge to tax where a financial institution has repossessed a property as a result of its business of lending money. Whilst in many cases the financial institution may exercise its control of the property under its security interest in the property (which is itself not a chargeable interest) there may be cases where the financial institution takes legal and beneficial ownership of the interest. In the absence of this relief they would otherwise be liable to pay ATED.
- 38.2 The following conditions are met for the relief to be claimable:
- the financial institution is carrying on a business that includes lending money
  - the single-dwelling interest has been acquired during the course of that business and as a result of those lending activities
  - the single-dwelling interest is held by the financial institution with the intention that it will be sold without delay
- 38.3 Whilst the single-dwelling interest should be disposed of without delay that does not necessarily always mean 'immediately' as delay in disposing of the



interest may be justified by commercial considerations or may be unavoidable.

- 38.4 Commercial considerations should be interpreted in a common sense manner – there must be objective business reasons for the delay – and this question will need to be judged on each set of facts. It may, for example, include a delay during which necessary legal requirements are carried out in relation to the repossession activity, or that market conditions mean that the financial institution will not make good its loss on the lending activity.
- 38.5 A financial institution is defined as one meeting the meaning given in section 564B of Income Tax Act 2007 except a person authorised by a licence under Part 3 of the Consumer Credit Act 1974 to carry on a consumer credit business or consumer hire business within the meaning of that Act (section 564B(1)(d)). It includes broadly; a bank, a building society, a wholly-owned subsidiary of a bank or of a building society, a bond-issuer, a person authorised in a jurisdiction outside the United Kingdom to receive deposits or other repayable funds from the public and to grant credits for its own account, an insurance company, or, a person who is authorised in a jurisdiction outside the United Kingdom to carry on a business which consists of effecting or carrying out contracts of insurance or substantially similar business but not an insurance special purpose vehicle (see CFM44030). If there is any question as to whether a person is a financial institution then these should be made in writing to HMRC, ATED Policy Team, Room 3C/20, 100 Parliament Street, London, SW1A 2BQ.

[CFM44030 – Deemed loan relationships: alternative finance: financial institution](#)

- 38.6 **Example one:** Bank Ltd carries on a lending business and it has lent £3 million to Mr Z so that he can purchase the freehold of a dwelling costing £4 million. Three years after advancing the loan the bank repossesses the property. In the course of those three years the property market fell by 30 per cent. Bank Ltd chooses to take direct (legal and beneficial) ownership of the property with the intention to resell once it can be certain that it will not make a loss on that loan. Bank Ltd establishes that once the market has recovered by 15 per cent it will be able to dispose of the property and not make a loss on the loan. That point is reached 24 months after repossession and the property is sold. Relief will be available during the course of Bank Ltd's ownership as it will meet all three conditions by taking into account its commercial considerations.

**Permission for a non-qualifying individual to occupy the dwelling**

- 38.7 As for property rentals businesses, relief is not available on any day when a non-qualifying individual is permitted to occupy a dwelling. In addition, relief will not be given on any subsequent day in that or any of the three subsequent chargeable periods where there is continuity of ownership. If a non-qualifying individual is permitted to occupy the dwelling, relief may be withdrawn for the earlier part of that chargeable period and for the preceding chargeable period as well.
- 38.8 However, in the event that an qualifying individual is in occupation on one of the earlier days (and the property rental business condition that the single-dwelling interest is actually being exploited as a source of rents or other

receipts is met (S133(1)(a) FA 2013)), then the withdrawal of the relief previously claimed for earlier days is limited to the point that this occupation by a qualifying individual ceased.

- 38.9 A 'non-qualifying individual' is defined in section 136 and guidance is at [paragraph 34](#) of this guidance. [Paragraph 30.5](#) of this guidance provides a definition of a 'qualifying individual'.
- 38.10 The rules for the look back and look forward rules will operate in a very similar way to the property rental business rules (see [paragraph 33](#) of this guidance). The key difference is in relation to the look forward rules where occupation of the dwelling by a person who is not a non-qualifying individual will not stop the look forward provisions operating unless the single-dwelling interest is exploited as a source of rents and would qualify for relief under section 133 – property rental business relief.

### **39 Occupation by certain employees or partners FA13/S145/S146/S147**

- 39.1 In certain situations, a dwelling may be owned by a trading business to provide living accommodation to employees. For example, a multinational company may own a flat in London which is made available as accommodation for employees from foreign offices who are visiting the UK for short periods of time or who are seconded to the UK. Provided certain conditions are met, such a dwelling can be relieved from ATED.
- 39.2 It should be noted that this relief is not just limited to accommodation provided to employees. Where a trading business is structured as a partnership, providing accommodation to certain partners may also be relievable (as well as to employees of the partnership).
- 39.3 Conditions for this relief look at what may be termed the 'holding structure', and also to the individuals allowed into occupation of the dwelling.

#### **39.4 Holding Structure**

For the relief to be available:

- a person must be entitled to a single-dwelling interest
- that person, or a 'relevant group member', must carry on a trade on a commercial basis with a view to a profit
- the single-dwelling interest must be held for the purposes of providing living accommodation, and
- the dwelling is made available for reasons that are solely or mainly to meet the purposes of the trade

- 39.5 Where the person is a company, a 'relevant group company' is simply a company which is within the same SDLT group (see [SDLTM23020](#)).

[SDLTM23020 – Reliefs: Group, reconstruction or acquisition relief](#)

- 39.6 The fact that the dwelling is to be occupied by individuals other than just the employee or partner will not impact on the ability to claim relief so long as

those individuals are occupying the dwelling as part of the employee or partner's family.

39.7 The dwelling must be held for the purposes of providing 'qualifying employees' or 'qualifying partners' with living accommodation.

**39.8 Qualifying employee**

Where a person is an employee (whether of a company or a partnership) they will qualify unless they are entitled to a 10 per cent or greater share:

- in the income profits of the trade
- in any company that is entitled to the single-dwelling interest in question, or
- in that single-dwelling interest

39.9 An 'employee' also includes holders of an office (for example a director, or company secretary).

39.10 Regardless of their stake in the business or single-dwelling interest an employee who '**provides excluded domestic services**' will also fall outside the definition of qualifying employee.

39.11 This will exclude a dwelling which is occupied as living accommodation by a person who provides services in connection with the occupation by a non-qualifying individual of either that dwelling or a 'linked dwelling' (see sections 117 and 118 FA 2013 and [paragraph 23](#) of this guidance). This would include an individual who is employed to provide domestic services such as a cleaner, cook or nanny. For these purposes a 'non-qualifying individual' is anyone connected with a person who is entitled to the single-dwelling interest. For example, if Ms R controls a company which owns a dwelling, relief will not be available because that company employs Ms R's cook who is allowed to occupy the dwelling.

**39.12 Qualifying partner**

Where a person is entitled to the single dwelling interest as a member of a partnership, any individual who is a member of a partnership will be a 'qualifying partner' unless their interest crosses a certain threshold which means they are entitled to a 10 per cent or greater share:

- in the income profits of the partnership
- in any company that is entitled to the single-dwelling interest in question, or
- in the partnership assets

**39.13 10 per cent or greater share of a company FA13/S147**

Relief will not be available where an employee or partner holds more than 10 per cent of a company that is entitled to a single-dwelling interest. When applying this test a broad approach is required by the legislation, and an individual will be treated as crossing this threshold where he or she possesses (directly or indirectly) or is entitled to acquire:

- 10 per cent or more of the share capital of the company
- 10 per cent or more of the issued share capital of the company
- 10 per cent or more of the voting power in the company

- so much of the issued share capital of the company as would, on the assumption that the whole of the income of the company were distributed amongst the participators (defined for these purposes as per the close companies rules – see CTM60107) entitle that person to receive 10 per cent or more of the amount so distributed, or
- such rights as would entitle that person, in the event of the winding up of the company (or in any other circumstances), to more than 10 per cent of the assets of the company which would then be available for distribution among the participators

39.14 It should be noted that certain rights will be attributed to the employee or partner ('A') when applying this test, including those which:

- are held by another on A's behalf
- are held by another who may be required to exercise those rights on A's direction or behalf
- are held by a company of which A (or A and his associates) have control
- are held by any associate or associates of A

39.15 'Associates' is defined in Part 10 of CTA 2010 (see section 448 and CTM60150). For the purposes of this provision, however, a person is not an associate of another purely because they are both members of a partnership. However, where two partners are associates for reasons other than their membership of the same partnership they will still be treated as associates.

[CTM60150 – Close companies: test: associates](#)

39.16 Even if these conditions are not met, a person will be treated as having a 10 per cent or greater share of a company if he or she exercises, or is able to exercise, or is entitled to acquire direct or indirect control over the company's affairs.

## **40 Farmhouses FA13/S148/S149**

40.1 A single dwelling interest that is a '**farmhouse**' and is occupied by a '**farm worker**' or a '**former long-serving farm worker**' may qualify for relief.

### **40.2 Farmhouse**

To qualify for relief:

- the farmhouse must form part of the land that is occupied for the purposes of a qualifying trade. If a property is occupied by a farm worker but is detached from the land used for the farming trade relief will not be available
- the farmhouse must also be owned by the person carrying on the farming trade or be owned by a person who is connected to the person carrying on the farming trade
- the farmhouse must be occupied by a farm worker for the purposes of the farming trade, or by a former long-serving farm worker or the surviving spouse or civil partner of a former farm worker, and

- the farming trade must be carried on a commercial basis and with a view to a profit. Whether a trade is carried on a commercial basis will need to be established by reference to all the facts

40.3 For the purposes of ATED a farming trade is drawn from the meaning provided in Section 1125 CTA 2010. It means the occupation of land wholly or mainly for the purposes of husbandry and, exceptionally, includes the occupation of land for the purposes of market gardening. The stabling of horses and care of those horses will not amount to either farming or market gardening.

#### **Farm worker**

40.4 An individual is a 'farm worker' if they have a substantial involvement in the day to day running of the trade or in the direction and control of the conduct of the trade.

40.5 Substantial involvement in the day to day running of the trade will be taken by HMRC to mean an individual who works for 20 hours per week. Day to day work of the trade will mean the work of the farming trade. This can include any tasks that are necessary for the operation of the trade such as ploughing, spraying, harvesting, milking, birthing etc. The 20 hour is per individual and not the amount that a group of individuals in a dwelling may together work in the trade. It must also be 20 hours per week on average throughout the year.

40.6 Equally, where the individual is responsible for the running of the farming trade rather than the day to day work of the farm it is also expected that that work will represent a minimum of 20 hours per week for any one individual. That work will include any responsibilities of the manager of the farming trade including decisions to make purchases of equipment, additional land, contracts for services to be provided, decisions on when, where and how to sell produce and stock etc.

40.7 Where an individual is carrying out duties that would fall into either day to day work or direction and control of the trade then the time spent on both can be considered when seeing if that person has substantial involvement. That is to say that if 10 hours per week are spent on each category on average then that will be treated as substantial involvement.

#### **Former long-serving farm worker**

40.8 An individual is a 'former long-serving farm worker' if the individual would have qualified as a farm worker for a qualifying period of 3 or more years or for periods that together total 3 or more years within a 5 year period.

40.9 A 'qualifying period' is a period throughout which:

- the individual occupied the farmhouse for the purposes of the trade
- the land was occupied for the purposes of the trade (and the farmhouse was attached to it)
- the trade was carried on by the person entitled to the single dwelling interest or a person connected to that person, and
- a person entitled to the single-dwelling interest is the same as on the day for which relief is claimed

- 40.10 The qualifying period does not need to start from the commencement of the ATED regime and does not need to have been immediately before ATED commenced (1 April 2013). This will mean that individuals who are at 1 April 2013 already retired will still potentially meet the conditions of being a former-long serving farm worker.
- 40.11 Occupation of part of the dwelling is to be regarded as occupying the whole of the dwelling for establishing the extent of the relief. That is to say that where only part of a single-dwelling interest is occupied for purposes that would qualify for farmhouse relief then the whole interest will be treated as qualifying.
- 40.12 **Example one** – A farmhouse is owned by a company and occupied by a shareholder/director who occupies the property for the purposes of the farming trade. The farmhouse is attached to the land used in the farming trade and the shareholder/director works 60 hours per week on average. The shareholder/director meets the conditions of being a farm worker and the farmhouse meets the conditions of being a farmhouse. Relief can therefore be claimed.
- 40.13 **Example two** – A farmhouse is owned by a company. A farming trade is carried on by a partnership with two members Mr A and his wife Mrs A. The farmhouse forms part of the land occupied for the purposes of the trade. Mr A is connected to the company and because the farming trade is conducted by a person connected to the owner of the single-dwelling interest the dwelling will qualify as a farmhouse. Furthermore, as Mr A works 60 hours per week on average and Mrs A works 10 hours per week, and the trade is carried on on a commercial basis with a view to profit, farmhouse relief will be available.
- 40.14 **Example three** – The facts are the same as in example two but Mr A and Mrs A only carry out 15 hours of work each. Because they will not be considered to have substantial involvement in the day to day work or direction and control of the farming trade, farmhouse relief will not be available
- 40.15 **Example four** – The facts are the same as in example two. However, Mr A dies whilst he still meets the conditions of being a farm worker. Mrs A alone (or with other individuals who do not qualify as farm workers) continues to occupy the farmhouse. Following her husband's death she does not increase the hours she works so she will not qualify as a farm worker herself. However, relief will be available because Mrs A is the surviving spouse or civil partner of a former farm worker.
- 40.16 **Example five** – the facts are the same as in example two but Mr A retires on 1 October 2016. He had met the conditions to be a farm worker for the 20 years prior to his retirement. Relief will be available to the company owning the single-dwelling interest as Mr A is a former long-serving farm worker.
- 40.17 **Example six** – the facts are the same as in example 2 but Mr A retires after being a qualifying farm worker for two years. No relief is available as Mr A will not qualify as a former long-serving farm worker.
- 40.18 **Example seven** - the facts are the same as in example five. Mr A dies five years after retiring. Mr A's spouse continues to occupy the dwelling. Relief is still available because Mrs A is the surviving spouse or civil partner of a

former farm worker. Two years later Mrs A dies and their son moves into the dwelling. He does not qualify as a farm worker as he works away from the farm and spends no time on farm work. The land is rented to another farmer. Relief is therefore not available.

- 40.19 **Example eight:** A farmhouse is owned by a company. A farming trade is carried on by a partnership with two members Mr A and his wife Mrs A. The farmhouse forms part of the land occupied for the purposes of the trade. Mr A is connected to the company and because the farming trade is conducted by a person connected to the owner of the single-dwelling interest the dwelling will qualify as a farmhouse. However, the Mr A and Mrs A partnership has contracted with XX Ltd to carry out the farming activities under a contract farming arrangement. Mr A spends on average 25 hours per week managing the partnerships business and liaising with the contractor. Relief will be available as Mr A meets the substantial involvement requirement. Had the facts been the same and Mr A only spent 10 hours engaged in managing the partnerships trade then relief would not be available.

## **41 Providers of Social Housing FA13/S150**

- 41.1 Relief from ATED may be claimed by a provider of social housing that owns the single-dwelling interest. In order for the relief to be claimable the provider of social housing must be either a 'profit making registered provider of social housing' or a 'relevant housing provider'. For both providers there are conditions that must be met to qualify for the relief.

### **Profit Making Registered Provider of Social Housing**

- 41.2 To qualify for relief the single dwelling interest must have been acquired with the assistance of a public subsidy. The acquisition does not have to be fully funded with the subsidy. A public subsidy means any grant or other financial assistance and follows the meaning given in the SDLT legislation at Section 71(4) FA 2003. It therefore includes grants or financial assistance:
- made or given by way of a distribution under Section 25 of the National Lottery etc Act 1993
  - under Section 18 of the Housing Act 1996 (social housing grants)
  - under Section 126 of the Housing Grants, Construction and Regeneration Act 1996 (financial assistance for regeneration and development)
  - under section 19 of the Housing and Regeneration Act 2008 (financial assistance by the Homes and Communities Agency)
  - under Section 2 of the Housing (Scotland) Act 1988 (general functions of the Scottish Ministers)
  - under Article 33 of the Housing (Northern Ireland) Order 1992

### **Relevant housing provider**

- 41.3 A relevant housing provider is either a non-profit registered provider of social housing or a registered social landlord and the necessary conditions in each case are met.
- 41.4 Relief will be available where the following conditions are met:

- the relevant housing provider is controlled by its tenants
  - the person from whom the relevant housing provider acquired the single-dwelling interest, or a part of the interest, is a 'qualifying body', or
  - the relevant housing provider's acquisition was funded with the assistance of a public subsidy
- 41.5 'Controlled by its tenants' takes its meaning from section 71(2) FA 2003 and means that the majority of the board members are tenants occupying properties owned or managed by the relevant housing provider. A 'board member' is regarded to be:
- if it is a company, a director of the company
  - if it is a body corporate whose affairs are managed by its members, one of those members
  - if it is a body of trustees, one of those trustees
  - otherwise, a member of the management committee or other body which is entrusted with the management of the relevant housing provider
- 41.6 'Qualifying body' takes its meaning from section 71(3) FA 2003 and that is:
- a relevant housing provider
  - a housing action trust established under Part 3 of the Housing Act 1988
  - a principal council within the meaning of the Local Government Act 1972
  - the Common Council of the City of London
  - the Scottish Ministers
  - a council constituted under Section 2 of the Local Government etc. (Scotland) Act 1994
  - Scottish Homes
  - the Department for Social Development in Northern Ireland
  - the Northern Ireland Housing Executive
- 41.7 'Public subsidy' has the same meaning as set out above in the section on Profit Making Registered Provider of Social Housing.

## Exemptions

### **42 Charitable Companies FA13/S151/S152**

- 42.1 A charitable company will be exempt from ATED in relation to a single-dwelling interest if it is held
- by a charitable company
  - the interest is held by that charitable company for qualifying charitable purposes, and
  - the necessary conditions for the exemption from the charge are met
- 42.2 The exemption will only be available where the single dwelling interest is held solely by the charitable company or is held jointly by one or more charitable companies or charitable companies and charitable trusts. For more information about charities, follow the link below.

[Charities and Community Amateur Sports Clubs](#)



#### 42.3 **What is a Charitable Company?**

The definition of a charitable company is to be found in Schedule 6 FA 2010. Follow the link below for further guidance. A charitable company is defined as a charity that is a body of persons and is distinct from a charitable trust. A 'charity' is defined as:

'a body of persons or trust that:

- (a) is established for charitable purposes only
- (b) meets the jurisdiction condition
- (c) meets the registration condition, and
- (d) meets the management condition'

#### [Annex II non-charitable expenditure](#)

42.4 A **charitable purpose** is defined in The Charities Act 2011 and includes amongst many other purposes; the prevention or relief of poverty, the advancement of education, the advancement of religion, and, the advancement of health or the saving of lives.

42.5 The **jurisdiction condition** requires the charitable company to be subject to the control of a relevant UK court or other court of a relevant territory. For these purposes a relevant territory includes a member state of the European Union or a territory specified in regulations. Therefore charitable companies that are not subject to courts in the UK or the specified other territories will not be charitable companies for the purposes of this exemption.

42.6 The **registration condition** requires the charitable company to meet one of two conditions. The first condition is that the body of persons (the charitable company) has complied with any requirement to be registered in the register of charities kept by the Charities Commission. The second condition is that the body of persons (the charitable company) has complied with any requirement under the law of a territory outside England and Wales to be registered in a register corresponding to that maintained by the Charity Commission.

42.7 The **management condition** requires the charitable company to have managers that are fit and proper persons to be managers of the body or trust. 'Managers', here means the persons who have the general control and management of the administration of the charitable company.

#### **What are 'qualifying charitable purposes'?**

42.8 For ATED qualifying charitable purposes are defined as the use of the property in the furtherance of the charitable purposes of the charitable company or another charity, or as an investment the profits of which are used for the charitable company's charitable purposes.

#### **What about Charitable Trusts?**

42.9 The trustees of a charitable trust, even where they are bodies corporate, will not meet the ownership condition for any single dwelling interest that they hold for the purposes of the charitable trust. They are therefore outside the scope of ATED. This is because the rules exclude from the meaning of an entitlement to a single-dwelling interest those entitlements that exist because of the person being a trustee (see [paragraph 2](#) of this guidance).

## What about companies owned by charitable companies or charitable trusts?

Where there is a company that is owned by a charitable company (or a charitable trust) and that subsidiary company is entitled to a single-dwelling interest that is within the tax, then exemption under the charitable companies provisions is not permitted. This is because such a company is not a charitable company - it is simply owned by a charitable company. However, such subsidiary companies can claim ATED reliefs where the relevant conditions are met.

### Conditions for Exemption

42.10 A charitable company will not be exempt from ATED if:

- a **donor** has made or agreed to make a **gift** to the charitable company or a charity that is connected with it
- there are **arrangements** that will lead to a **linked individual** being (or is to be in the future) permitted to occupy the dwelling, and
- it is reasonable to assume in view of the likely effects of the gift and the arrangements or the circumstances of the gift and the circumstances of the arrangements being entered into that the gift and the arrangements would not have been made independently of one another

42.11 A 'gift' will include any gift of money or money's worth and will include the disposal of an asset for less than the market value of the asset at the time of the gift. A 'donor' is the person making the gift. That person does not need to be an individual for the rules to apply.

42.12 A day when these conditions are present will be an **excluded day** and ATED will be payable by the charitable company.

### What is an Arrangement?

42.13 An arrangement will include a scheme, arrangement or understanding of any kind (whether or not legally enforceable). An arrangement may therefore include a contract, transaction, memorandum of understanding, or verbal agreement in relation to the gift or the arrangements.

### Who is a Linked Individual?

42.14 A linked individual is an individual who is the donor or an individual who was, when the arrangements were entered into, an **associate** of the donor.

An associate of the donor is:

- an individual who is connected to the donor
- an individual who is the settlor in relation to a settlement of which the trustee is connected (in their capacity of trustee) with the donor
- the spouse or civil partner of a connected person or of a relevant settlor
- a **relative** of a connected person or of a relevant settlor, or the spouse or civil partner of a relative or of a connected person or of a relevant settlor

- a relative of the spouse or civil partner of a connected person or of a relevant settlor, or
- the spouse or civil partner of a relative of the spouse or civil partner of a connected person or of a relevant settlor

A 'relative' is a brother or sister, ancestor or lineal descendent, and a 'settlement' has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005.

A 'trustee' has the same meaning as in section 1123(3) CTA 2010.

### **Conditions when the Excluded Day rules will not operate**

- 42.15 Where a charitable company has received a gift from a donor and relevant arrangements are entered into at the same time that would make a day an excluded day (i.e. one that is not chargeable) it is possible that the use of the dwelling may provide that a day is not an excluded day.
- 42.16 The charitable company must meet one of three conditions for a day not to be an excluded day. These are:
- the **first** condition – that the activities undertaken by the charitable company include as a primary charitable purpose the opening of the dwelling to the public
  - the **second** condition – that the dwelling is used by the charitable company in a commercial manner that involves opening the dwelling to the public
  - the **third** condition – that steps are being taken so that the first or the second condition will be met without undue delay, or that the single-dwelling interest will be sold without undue delay
- 42.17 For this exemption only, '**opening the dwelling to the public**' means offering the public the opportunity to make use of, stay in, or otherwise enjoy the dwelling on at least 28 days of the year. The public access must be to a significant part of the interior of the dwelling or of the dwelling's garden or grounds.
- 42.18 For this exemption only, '**without undue delay**' means without delay unless that delay is justified by commercial considerations or in order to meet the charitable company's primary purpose.
- 42.19 For this exemption only, '**significant part**' of the single-dwelling interest is to be interpreted as meaning the relative size of the areas that the public can visit as well as the nature and function of those areas. When considering if a significant part is opened to the public the rules are to be applied to the interior of the dwelling or to the garden or grounds.
- 42.20 It should be noted that this exemption extends the definition of the parts opened to the public to include the garden or grounds which is not a feature of the dwellings opened to the public relief (see [paragraph 35](#) of this guidance). It is important that taxpayers do not confuse this exemption with that relief.
- ### **Special Situation**
- 42.21 These rules do not apply where the gift, or an agreement to make a gift, is made before 17 July 2013 (the date that Finance Act 2013 was passed).

Where such a gift was made before that date the rules regarding any arrangements made as a result of the gift will not trigger the excluded day rules resulting in a charge on the charitable company.

- 42.22 Similarly, arrangements are disregarded where they are entered into before 17 July 2013, subject to there not being any 'material alteration' to the arrangements that occurred after that date. A 'material alteration' will be a change to the arrangements that relate to the permission to occupy the dwelling.
- 42.23 **Example one** - A Ltd gifts a single-dwelling interest worth £15 million to Z Ltd a charitable company on 1 March 2015. As part of the conditions of the gift Z Ltd agrees to allow Mr A and his descendants to occupy the property rent free for the next 100 years and no other persons are permitted to occupy the dwelling and Z Ltd does not open it to the public. Mr A has a controlling shareholding in A Ltd. On these facts Z Ltd is liable to make ATED returns and pay ATED based on the band into which the dwelling falls.
- 42.24 **Example two** - Mr B had gifted a single-dwelling interest worth £7 million to Y Ltd a charitable company on 1 October 2000. As part of the conditions of the gift, Y Ltd agrees to allow Mr B and his descendants to occupy the property rent free for 100 years and no other persons are permitted to occupy the dwelling. Y Ltd permits the public to have access to the dwelling and the gardens for less than 10 days per annum. But although Y Ltd does not otherwise meet the conditions for the excluded day rules to operate, because the arrangements in question were entered into before 17 July 2013, it is exempt from ATED, subject to there being any material changes to the arrangements.
- 42.25 **Example three** - The facts are the same as in example two but Mr B approaches Y Ltd to extend the period that his descendants may occupy the property rent free. Y Ltd agrees to extend the time to 150 years. This is a material alteration but it will not result in Y Ltd needing to make ATED returns and payments of ATED because that alteration has been made independent of any gift to the charitable company and therefore the alteration has been made independently of the gift. If another gift to the charitable company had been made at the same time as the alteration to the arrangements then Y Ltd would become liable to ATED.

### **43 Public Bodies FA13/S153**

- 43.1 Public bodies as defined in the legislation are not regarded as companies for the purposes of ATED and they will therefore not meet the ownership condition in section 94(4) FA 2013. They will therefore not meet the ownership condition and are therefore under no obligations to make returns.
- 43.2 It should be noted that where the powers in section 66(4) FA 2003 are exercised to prescribe a person to provide relief from SDLT that the prescribing may not necessarily follow through to ATED. There may be situations where it is appropriate for the SDLT and ATED rules to diverge

### 43.3 **Public bodies for the purposes of ATED**

The public bodies covered by the exemption for England and Wales, Scotland, and, Northern Ireland are listed below and are taken from S66(4) FA 2003.

As well as the bodies themselves, any company in which all the shares are owned by a listed body, as well as any wholly owned subsidiary of such a company, will also be exempt.

Also included in the definition of a public body are:

- statutory bodies
- a body (other than a company) that is established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision
- prescribed persons
- a person prescribed by HM Treasury order for the purposes of section 66 FA 2003

### 43.4 **List of Public Bodies situated in England and Wales**

Government and Parliament

- A Minister of the Crown
- The National Assembly for Wales Commission
- The Corporate Officer of the House of Lords
- The Corporate Officer of the House of Commons

Local government

- A county or district council constituted under Section 2 of the Local Government Act 1972
- A county or county borough council constituted under Section 21 of the Local Government Act 1972
- The council of a London borough
- The Greater London Authority
- The Common Council of the City of London
- The Council of the Isles of Scilly

Health

- A Strategic Health Authority established under Section 13 of the National Health Service Act 2006
- A Special Health Authority established under Section 28 of the National Health Service Act 2006
- A Primary Care Trust established under Section 18 of the National Health Service Act 2006
- A Local Health Board established under Section 11 of the National Health Service Act 2006
- A National Health Service Trust established under Section 25 of the National Health Service Act 2006
- A National Health Service Trust established under Section 18 of the National Health Service (Wales) Act 2006

Other

- Any other authority that is a local planning authority within the meaning of the Town and Country Planning Act 1990

#### 43.5 **List of Public Bodies situated in Scotland**

##### Government and Parliament

- The Scottish Ministers
- The Scottish Parliamentary Corporate Body

##### Local government

- A council constituted under Section 2 of the Local Government etc. (Scotland) Act 1994

##### Health

- A Health Board established under Section 2(1)(a) of the National Health Service (Scotland) Act 1978
- A Special Health Board established under Section 2(1)(b) of the National Health Service (Scotland) Act 1978
- The Common Services Agency established under Section 10(1) of the National Health Service (Scotland) Act 1978
- A National Health Service Trust established under Section 12A(1) of the National Health Service (Scotland) Act 1978

##### Other

- Any other authority that is a planning authority for any of the purposes of the planning Acts within the meaning of the Town and Country Planning (Scotland) Act 1997

#### 43.6 **List of Public Bodies situated in Northern Ireland**

##### Government and Parliament

- A Northern Ireland Department
- The Northern Ireland Assembly Commission

##### Local government

- A district council within the meaning of the Local Government Act (Northern Ireland) 1972

##### Health

- A Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I.1972/1265 (N.I.14))
- A Health and Social Services Trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I.1991/194 (N.I.1))

### ***44 Bodies established for National Purposes FA13/S154***

- 44.1 The bodies listed below are exempted from ATED because they are not regarded as a company for the purposes of ATED. They will therefore not meet the ownership condition in section 94(4) FA 2013. As they are deemed not to meet the ownership condition they are therefore under no obligations to make returns.

- The Historic Buildings and Monuments Commission for England.
- The Trustees for the British Museum.
- The Trustees of the National Heritage Memorial Fund.
- The Trustees of the Natural History Museum.

## **45 Dwelling Conditionally Exempt from Inheritance Tax FA13/S155**

45.1 Where the necessary conditions are met a single dwelling interest is treated as having a taxable value of zero (so long as there has been no chargeable event between the date of the transfer of value (see IHTM04024) and any date to which the exemption from ATED is relevant).

[IHTM04024 – Structure of the charge: what is a transfer of value?](#)

45.2 In many cases dwellings that are Conditionally Exempt from Inheritance Tax are owned by individuals and therefore do not in any case meet the ownership conditions for ATED. The exemption should therefore apply in a very limited number of cases. If there is any question as to whether a person owns a dwelling conditionally exempt from inheritance tax then these should be made in writing to HMRC, ATED Policy Team, Room 3C/20, 100 Parliament Street, London, SW1A 2BQ.

### **Background**

45.3 Sections 30 to 35 Inheritance Tax Act 1984 give effect to the general policy of allowing conservation of items of national heritage by enabling transfers of value (IHTM04024) to be conditionally exempted to the extent that

- the property transferred is designated by HMRC as of national interest, and
- an appropriate person, usually the new owner, gives undertakings to
  - preserve the property
  - allow reasonable public access, and
  - keep any works of art (or other items) in the UK

[IHTM04024 – Structure of the charge: what is a transfer of value?](#)

45.4 The exemption is described as conditional because there is normally a tax charge if the undertakings are broken or the property is sold or given away. More information can be found at IHTM11260.

45.5 It should be noted that the exemption only applies to the dwelling (or a part of it) that has been designated under section 31 Inheritance Tax Act 1984 and not any dwelling in which other conditionally exempt property (for example paintings) are located. Follow the link below for a list of conditionally exempt land and buildings.

[Land, buildings and their contents - search](#)

### **Conditions**

- 45.6 The conditions that must be met for the property to be deemed to have a zero value (and therefore not meet the 'value' condition in section 94(2) FA 2013) are:
- the whole or part of the dwelling has been appropriately designated under section 31 Inheritance Act 1984
  - an appropriate person, usually the owner, commits under section 31 Inheritance Act 1984 to
    - preserve the dwelling, and
    - allow reasonable public access, and
  - the transfer of value in relation to the dwelling was exempt from inheritance tax as a result of HMRC's designation and the commitments made in relation to the dwelling.
- 45.7 Similar rules apply to a dwelling in relation to which an undertaking has been made under section 78 Inheritance Act 1984 (which concerns settled property).

## **Alternative property finance**

### ***46 Land sold to financial institution and leased to person FA13/157***

- 46.1 Where a land transaction has occurred and the provisions of sections 71A or 72 of Finance Act 2003 (Alternative Finance) apply in relation the arrangements between the financial institution and another person and the land which the financial institution has acquired under the 'first transaction' includes one or more dwellings then special rules apply for ATED. The land purchased by the financial institution must be a major interest (as defined by section 117 FA 2003 – see SDLTM04130)
- 46.2 See SDLTM28000 for guidance in relation to these transactions for Stamp Duty Land Tax purposes.
- 46.3 For the purposes of this section:
- 'financial institution' has the meaning given by section 73BA of FA 2003;(see CFM44030 although the definition for ATED (as for SDLT) does not include a person licensed under the Consumer Credit Act to carry on a consumer credit business or consumer hire business)
  - 'the first transaction' has the same meaning as in section 71A or (as the case requires) 72 of FA 2003; (See SDLTM28120 and SDLTM28220)
  - 'further transaction' has the same meaning as in section 71A of FA 2003; (see SDLTM28140)
  - 'the leasehold interest' means the interest granted to the lessee under the second transaction
  - 'the second transaction' has the same meaning as in section 71A or (as the case requires) 72 of FA 2003. (See SDLTM28130 and SDLTM28230)



[CFM44030 – Deemed loan relationships: alternative finance: ‘financial institution’](#)

[SDLTM28120 – Reliefs: Alternative property finance](#)

[SDLTM28220 – Reliefs: Alternative property finance](#)

[SDLTM28130 – Reliefs: Alternative property finance](#)

[SDLTM28230 – Reliefs: Alternative property finance](#)

- 46.4 Where the lessee is a company then despite the legal effect of the arrangements between the parties ATED operates as though the interest held by the financial institution was held by the company and that the sub-lease granted under the second transaction had not been granted. That is to say that the company, for ATED purposes, is treated as though it was beneficially entitled to the single-dwelling interest acquired under the ‘first transaction’.
- 46.5 Where a company is treated as holding an interest is a member of a partnership it will be treated as holding that interest as a member of the partnership (and therefore meeting the ownership condition for a partnership with member that is a company).
- 46.6 Where the arrangements operate for the benefit of a collective investment scheme then that interest is treated as held for the collective investment scheme. The interest held by the financial institution, for ATED purposes is treated as held for the purposes of the collective investment scheme and that the sub-lease granted under the second transaction had not been granted.
- 46.7 In relation to all the ownership conditions these ‘deeming’ rules are to have effect for as long as the arrangements are in operation. The arrangements are to be considered in operation when:
- the lessee holds the leasehold interest granted to it under the second land transaction, and
  - the interest purchased under the first transaction is held (except where there has been a ‘further transaction’) by the financial institution

## **Administration and payment of tax**

### ***47 Annual Tax on Enveloped Dwellings Return FA13/S159***

- 47.1 An Annual Tax on Enveloped Dwellings return must be made by a person for a chargeable period in respect to any single-dwelling interests that that person owns and which is chargeable under the ATED.
- 47.2 An ATED return must be made within 30 days of the date on which the person first comes within the charge to ATED. A person who owns a single-

dwelling interest on the first day of the chargeable period (1 April each year) will have a filing date for the return of 30 April.

- 47.3 If the person acquires a property part way through the chargeable period (for example by purchasing a single dwelling interest from a third party) then the filing date for their ATED return, is as it is for their Stamp Duty Land Tax return, 30 days after the date of that acquisition/transaction.
- 47.4 There are two 90 day filing dates provided in the legislation. These are for 'new dwellings' and 'dwellings produced from other dwellings' (see [paragraph 26](#) of this guidance).
- 47.5 You must make a return per dwelling where ATED is to be paid (i.e. where a relief cannot be claimed). You may make one return for more than one dwelling if you are making the same relief claim for all of those dwellings.
- 47.6 You may not make a single return to cover a number of dwellings owned by grouped or associated entities except where those companies are joint owners (or owners of separate interests in the same dwelling). In this case you will need to decide the company in whose name the return will be made.
- 47.7 A taxpayer can make an amendment to its return, or its return of adjusted chargeable amount, at any point within 12 months of the end of the chargeable period to which the amendment relates. Where the return has been made late, or is an amendment to the return, then the period in which the return can be amended is limited to a period of three months after the date of the return if longer.
- 47.8 Where a taxpayer has disposed of the dwelling during the course of a year and had previously claimed a relief (so that there is no repayment due to them) in relation to that dwelling they should still submit an amended return showing the disposal of the dwelling.
- 47.9 The return must be delivered to HMRC by the filing date in order to avoid late filing penalties. Returns should be sent electronically using the link the below.

[Annual Tax on Enveloped Dwellings \(ATED\) Return](#)

Alternatively, the return may be sent by post using the paper form, more information can be found on GOV.UK on how to [obtain an ATED paper return](#).

- 47.10 **Example one:** A Ltd owns a single-dwelling interest within the scope to charge on 1 April 2015. The filing date for the return for the chargeable period 1 April 2015 - 31 March 2016 is 30 April 2015.
- 47.11 **Example two:** B Ltd acquires a single-dwelling interest on 20 September 2016. It needs to file a return for the period 20 September 2016 - 31 March 2017 by 19 October 2016. This is because new acquisitions of a single dwelling interest that is to be within the charge to ATED must be filed within 30 days of the date of acquisition.
- 47.12 **Example three:** C Ltd has built a new dwelling which represents a single-dwelling interest within the charge to ATED. The completion day (see

[paragraph 26](#) of this guidance) is 15 June 2016. The filing date is therefore 90 days after the completion day, which in this case is 13 September 2016.

47.13 **Example four:** D Ltd files its return for the chargeable period 2014-15 late on 15 February 2016. The normal date for amending 2014-15 returns is 31 March 2016. For D Ltd as this is a period of less than 3 months from the date of filing its return the final date on which D Ltd can amend its 2014-15 return is 15 May 2016.

## **48 Return of Adjusted Chargeable Amount FA13/S160**

48.1 A Return of Adjusted Chargeable Amount is a return that is required in addition to any other returns made for a particular chargeable period. It is referred to as a 'further return' and when completing the return it is essential that the taxpayer tick the relevant box on the return to indicate that it is a further return.

48.2 A Return of Adjusted Chargeable amount is required in two situations;

- the **first situation** is where the adjusted chargeable amount for the chargeable period is greater than previously but that this difference is not as a result of a claim to interim relief
- **the second situation** is where a taxpayer has claimed interim relief either in an annual tax on enveloped dwellings return, or an amended annual tax on enveloped dwellings return, and the adjusted chargeable amount for the chargeable period is greater than that returned on the earlier return

48.3 A further return must be made within 30 days of the beginning of the chargeable period that follows the chargeable period in which the event that increased the value of the single-dwelling interest occurred or the chargeable period to which the interim relief claim was made. This rule effectively means that the filing date for all further returns will be 30 April each year unless the event occurs after the end of the chargeable period, in which case it will be 30 days following the event.

48.4 The further return must be delivered to HMRC by the filing date in order to avoid late filing penalties. Returns should be sent electronically using the link to the return below.

[Annual Tax on Enveloped Dwellings \(ATED\) Return](#)

Alternatively, the return may be sent by post using the paper form, more information can be found on GOV.UK on how to [obtain an ATED paper return](#).

48.5 **Example one:** A Ltd owns a single-dwelling interest within the scope of charge on 1 April 2015 and has owned the single-dwelling interest from 1 June 1996. The value of the interest at 1 April 2012 is £4 million. A Ltd files its ATED return on 28 April 2015 and pays £15,000 on the same date. On 25 June 2015 A Ltd completes the acquisition of a lease extension of 50 years from its freeholder at a cost of £1.5 million. As the acquisition is for more than £40,000 there has been a substantial acquisition and therefore the single-dwelling interest must be re-valued on 25 June 2015 (see [paragraph 10](#) of this guidance). The single-dwelling interest is now valued at £6.5 million. A Ltd calculates it will need to send in a further return to pay an additional amount of ATED. The calculation is  $(1/366) \times £15,000 = 40.983 \times 85 = £3,483 + (1/366) \times £35,000 = 95.627 \times 282 = £26,966$ , a total of £30,449 and it is this total figure that must be shown on the further return not just the net increase. However, as A Ltd has already paid £15,000 it will need to pay a further £15,450 by 30 April 2016. The filing date for the further return for the chargeable period 1 April 2015 – 31 March 2016 is also 30 April 2016.

48.6 **Example two:** B Ltd owns a single-dwelling interest within the scope of charge on 1 April 2016 and has owned the single-dwelling interest from 1 September 2003. The value of the interest at 1 April 2012 is £7 million. A Ltd files its ATED return on 24 April 2016 and claims interim relief on the basis that the single dwelling interest is being used in a property rental business. It therefore has no liability to pay when it files its return.

On 1 January 2017 B Ltd permits a non-qualifying individual to occupy the property and that individual moves in on 1 February 2017. As the dwelling no longer qualifies for relief from 1 January 2017 B Ltd is liable to pay ATED on the single dwelling interest from that date. B Ltd should not send in an amended return during the year but it is required to send in a further return to reflect the fact that too much interim relief has been claimed. The result of the Amount A and Amount B interim relief calculation is zero. The adjusted chargeable amount following the non-qualifying individual being permitted to occupy the dwelling is  $(275/365) \times £0$  (Amount A) +  $(1/365) \times £35,000 = 95.8895 \times 90 = £8,630$ , a total of £8,630. B Ltd has paid nothing as it had previously (and correctly) claimed interim relief for the whole of the 2016/17 chargeable period. The filing date for the further return for the chargeable period 1 April 2016 – 31 March 2017 is 30 April 2017 when the tax due for that chargeable period must also be paid.

48.7 **Example three:** C Ltd owns a single-dwelling interest within the scope to charge on 1 April 2014 and has owned the single-dwelling interest from 1 December 2006. The value of the interest at 1 April 2012 is £2.5 million. Mr C, a non-qualifying individual, is permitted to occupy the dwelling and C Ltd files its ATED return on 15 April 2014 and pays £15,000 on the same date. On 1 July 2014 C Ltd rents the dwelling to Ms Z an unconnected individual.

On 7 July C Ltd sends in an amended return to claim interim relief from the date that Ms Z commenced renting the dwelling. The amended return contains a self assessment based on the calculation of the Amount A and Amount B. A Ltd calculates it will need to send in an amended return as it is entitled to a repayment. The calculation of the ATED on this amended return is  $(1/365) \times £15,000 = 41.0955 \times 91 = £3,739 + (274/365) \times £0 = £0$ , a total of

£3,739 and it is this figure that must be shown on the return. Following receipt of the amended return HMRC makes a repayment to C Ltd of £11,261.

However, on 30 November 2014 Ms Z departs from the property and Mr C is again given permission to occupy the dwelling. C Ltd does not need to make an amended nor a further return at this point but must make a further return ('a Return of Adjusted Chargeable Amount') by 30 April 2015. The further return is needed because the total of Amounts A and B on the last return made is less than the adjusted chargeable amount. The adjusted chargeable amount for Amount A is  $(1/365) \times £15,000 = 41.0955 \times 212 = £8,712$  and Amount B is  $(153/365) \times £0 = £0$ . As C Ltd has paid (after repayment) £3,739 it will need to pay a further £4,973 by 30 April 2015. The filing date for the further return for the chargeable period 1 April 2014 – 31 March 2015 is also 30 April 2015.

## **49 Self Assessment Return FA13/S161**

- 49.1 This section provides for the submission of a self-assessment return to be submitted for each dwelling where ATED is due.
- 49.2 This includes the submission of an annual return (see paragraphs 6 & 7 of this guidance) or a further return (see paragraphs 12 & 13 of this guidance).

## **50 Administration of ATED FA13/S162/S164/165**

- 50.1 Schedule 33 ([Schedule 33](#)) and 34 ([Schedule 34 Page 340](#)) of this guidance) to Finance Act 2013 prescribe the format of returns, how the charge to ATED is assessed and how enquiries are conducted as well as related administration matters.
- 50.2 The Treasury has the power to amend Schedule 33 at any time where they deem it appropriate to do so.
- 50.3 The collection and recovery of ATED is subject to the same rules which govern the collection and recovery of Stamp Duty Land Tax (SDLT) as prescribed under Schedule 12 to Finance Act 2003. This not only includes ATED but also any unpaid penalty or interest.

## **51 Payment of Tax FA13/S163**

- 51.1 ATED is payable on the filing date of a return (with the exception of the chargeable period 2013-14 where special transitional rules existed providing that the first payment date is 31 October 2013).
- 51.2 Where there is a liability to pay tax on any return the due date for payment is the same as the filing date.

- 51.3 For a Return of Adjusted Chargeable Amount (a 'further' return) the due and payable date is the same as the filing date. In most cases this is 30 days after the end of the chargeable period to which it relates which will be 30 April. Where an event occurs after the end of the chargeable period, the filing date will be 30 days following the event.
- 51.4 For an amended return the due and payable date will be the same as the date of the original return that's being amending. As there are interest implications for late payment of ATED, it is important that a return is not amended when it should be a further return. A return should be amended when claiming a further relief in a chargeable period which may result in a repayment of tax already paid or to correct an error.
- 51.5 **Example one** - A Ltd owns a single-dwelling interest within the scope of charge on 1 April 2015 and has owned the single-dwelling interest from 1 June 1996. A Ltd must make payment by 30 April 2015. A Ltd subsequently finds that it has underpaid tax because an error was made in the valuation of the dwelling. It therefore makes an amended return on 1 September 2015. Interest, and potentially penalties for late payment, will be payable on the additional tax now payable as a result of the amended return as the due and payable date was 30 April 2015.
- 51.6 **Example two** - B Ltd owns a new single-dwelling interest that has come within the charge to tax on 1 March 2017 as a result of the 'completion day' rule (see [paragraph 26](#) of this guidance). The filing date, and therefore the due and payable date, for the return for the chargeable period 2016-17 is 90 days after the completion day so it is 29 May 2017. The filing date and due and payable date for the next chargeable period (2017-18) is 30 April 2017. Taxpayers may find it easier to file, and make the relevant payment for, the two returns together, but it is important that this is by 30 April 2017 so that no penalty position arises in relation to the 2017-18 return.

## Application of provisions

### ***52 Application of Provisions – Companies FA13/S166***

- 52.1 This section provides the definition of a company for the purposes of ATED and specifies who is responsible for notifying and paying ATED.
- 52.2 A company is defined as any body corporate. It does not extend to partnerships even where the partnership is itself a body corporate (for example limited liability partnerships). Additionally, and for the purposes of clarity and certainty in relation to ATED, a corporation sole is not to be treated as a body corporate. Where the body corporate, partnership or other entity is a foreign entity and there is uncertainty as to its nature for the purposes of ATED then you may write to HMRC, ATED Policy Team, Room 3C/20, 100 Parliament Street, London, SW1A 2BQ for an opinion as to the nature of the entity. When writing you should set out all of the relevant facts and include copies of any relevant documents, translated into English as necessary. Such documents would include copies of the law under which the entity is formed, the name of the entity, the names etc of any holders of interests in the entity

and all other information or documents that you think will be necessary for HMRC to form a view of the nature of the entity.

52.3 The proper officer of the company, usually the company secretary, or another person (normally another officer for example a director) authorised by the company, should sign the declaration in ATED return, amended return, or further return.

52.4 The authority can be

- express
- implied
- apparent

52.5 In practice, a return, amended return or further return should be accepted provided that

- it contains a signature
- there is no reason to doubt the authority of the person signing

52.6 On this basis, the signature of any company official or employee can be accepted. This will include a member of an in-house legal team.

### **Company in liquidation**

52.7 When a company is in liquidation or administration, different rules apply. The liquidator or administrator, as the case may be, will be the proper officer of the company and must sign the return, amended return or further return.

52.8 If more than two people are appointed as administrators then the proper officer is whichever is so notified to HMRC, or, where notification is made, by HMRC.

## ***53 Application of Provisions – Partnerships FA13/S167***

53.1 A partnership for the purposes of ATED is defined as

- a partnership within the Partnership Act 1890
- a limited partnership registered under the Limited Partnerships Act 1907
- a limited liability partnership formed under the Limited Liability Partnerships Act 2000 or the Limited Liability Partnerships Act (Northern Ireland) 2002, or
- a firm or entity of a similar character to any of the above formed under the law of a country or territory outside the United Kingdom

53.2 In this guidance, unless specified otherwise, the word 'partnership' is used generically to refer to any entity that qualifies as a partnership under any of the above definitions.



53.3 In each case, a partnership will exist if and only if the entity carries on a 'business'. HMRC's guidance on this is set out in the Property Income Manual at PIM1030. Where an entity does not carry on a business there will not be a partnership, so, it is possible that holding investment property jointly might not constitute a business.

[PIM1030 – Introduction: jointly owned property & partnerships](#)

- 53.4 A partnership that has a legal personality (that is to say that it capable of being entitled to a single-dwelling interest in its own rights) is not recognised as such for the purposes of ATED. Rather any transactions entered into by the partnership are deemed to be entered into by all of the partners and the entitlement to a single-dwelling interest is deemed to rest with the partners jointly and that the partnership itself is not entitled to the interest.
- 53.5 For the purposes of ATED, a partnership is treated as the same partnership notwithstanding a change in membership if any person who was a member before the change remains a member after the change. This does not change the requirement that for a partnership to exist there must be more than one partner.
- 53.6 **Example one** - If, for instance, partners B and C leave a three person partnership consisting of A, B and C, the partnership ceases to exist as a single partner partnership is not possible. If, at a later date, D joins A in partnership this is a new partnership.
- 53.7 **Example two** - Using the same facts, there could be a continuing partnership if D joined the ABC partnership under the same agreement and at the same time as B and C left. In this case there is always more than one partner and the requirement for there to be a member who was a member before the change who remains a member after the change is satisfied.
- 53.8 A partnership is not to be regarded for the purposes of this Part of this Act as a unit trust scheme or an open ended investment company or other collective investment scheme vehicle.
- 53.9 The meeting of an obligation under the ATED legislation by the partners may be met instead by one or more representative partners. So a representative partner may sign the declaration in ATED return, amended return, or further return. The representative partner is a partner who has been nominated by the majority of the other partners to be the representative partner. Any nomination of a representative partner must be notified to an officer of HMRC. Please send such notices of nomination (or changes and revocations of such nominations) to HMRC, ATED Policy Team, Room 3C/20, 100 Parliament Street, London, SW1A 2BQ.

## Supplementary provisions

### ***54 Transition rules relating to Chargeable Period 2013-2014***

- 54.1 Part 2 of Schedule 35 to Finance Act 2013 contains some important transitional rules for the first chargeable period of ATED (1 April 2013 – 31 March 2014).



- 54.2 These transitional rules apply in particular to the date by which an ATED return must be delivered to HMRC and secondly to the date that payment must be made to HMRC.
- 54.3 Where a dwelling is owned by the taxpayer at 1 April 2013 or newly acquired a dwelling on or before 1 September 2013 the filing date will be 1 October 2013.
- 54.4 Where the dwelling was newly acquired after 1 September 2013 then the normal 30 day filing rule will apply. So a dwelling acquired on 2 September 2013 will have a filing date of 2 October 2013 etc.
- 54.5 Where the dwelling is newly entering the charge because it is a new dwelling or it is a dwelling produced from other dwellings and it meets the conditions in either section 124 or 125 (see [paragraph 26](#) of this guidance) then the filing date, exceptionally, will be either 1 October or 30 days (rather than the 90 days as provided more generally) after the date that the relevant conditions were met.
- 54.6 The tax payable will be due on 31 October 2013 in all cases except those where the filing date for the return is after 31 October 2013. In these cases the filing date and payment date will be the same. For example:
- if the filing date for the return is 1 October 2013 the payment date will be 31 October 2013
  - if the filing date for the return is 20 November 2013 then the payment date will also be 20 November 2013
  - if the filing date for the return is 10 October 2013 then the payment date will be 31 October 2013
- 54.7 The reason why the filing date and the payment date are different for these first fixed dates is so that HMRC can provide taxpayers with their charge reference number under which they are to make their first and all subsequent payments of ATED unless that charge reference number is replaced by HMRC with another number.

## Interpretation

### **55 Connected Persons (including 'Cell Companies')** **FA13/S172/173**

- 55.1 ATED uses the rules in Section 1122 CTA 2010 to establish if one person is connected to another. Similarly, ATED uses the rules in Section 448 CTA 2010 to establish if one person is an associate of another. However, in relation to an 'associate' a partner (that is a partner in a business partnership, not a personal partner/common law spouse) is not considered to be an associate. The relevant sections of the Corporation Tax Act 2010 are replicated in the appendix at the end of this guidance.

- 55.2 A person is taken to be connected with a collective investment scheme if they are a 'major participant'. A person who participates in a collective investment scheme will be a 'major participant' if they are entitled to:
- at least 50 per cent of either all the profits or income arising from the scheme or of any profits or income that are to be distributed to the participants in the scheme, or
  - 50 per cent or more of the assets that would be available for distribution amongst the participants in the collective investment scheme on its winding up
- 55.3 In establishing connection between a person and a Unit Trust Scheme the rule in 53.2 does not apply. This is because for the purposes of establishing connection section 1123 CTA 2010 treats a Unit Trust as though it were a company and the rights of the unit holders are treated as though they are shares in a company. This should mean that the treatment of Unit Trust Schemes when establishing connection should be no different from where a company is being considered and that this in turn will be no different from the treatment of a collective investment scheme as control will still, most commonly, defined by a more than 50 per cent interest.
- 55.4 In establishing whether a person is a major participant it will be necessary to consider not only what their rights and powers actually are on the relevant date but also what that person is entitled to acquire at a future date or will at a future date be entitled to acquire.
- 55.5 Again, in establishing if a person is a major participant it will be necessary to include the rights and powers of any associate which are to be attributed to the person to establish the degree of their interest in the collective investment scheme.

### **Connected Persons: Cell Companies**

- 55.6 A person is deemed to be connected to a 'cell company' where that person would be a connected person with any individual cell if that cell was treated as a separate company.
- 55.7 The definition of a 'cell company' is dependent upon it meeting either of the two conditions below:
- 55.8 **First condition** – that under the law under which the company was incorporated or formed the articles of association (or other relevant document), or under arrangements entered into or by the company:
- some or all of the assets of the company are available primarily or solely to meet particular liabilities of the company, and
  - some or all of the members of the company, and some or all of its creditors have rights primarily or solely in relation to certain assets of the company.

55.9 **Second condition** – that the company’s articles of association, or other document regulating it, establish an entity which:

- under the law the company was incorporated or formed that entity has a legal personality distinct from the company, and
- that entity is not itself a company

55.10 A ‘cell’ of a ‘cell company’ is:

- an identifiable part of the company that carries on distinct activities and where particular assets and liabilities are wholly or primarily attributed, or
- it is an entity which meets the definition set out in the second condition

55.11 It does not matter if the ‘cell’ or ‘cell company’ is called by any other name. If it meets the criteria set out it will be treated as a cell and cell company for the purposes of this legislation.

55.12 Examples of cell companies for ATED are likely to include entities such as protected or segregated cell companies formed in Jersey, Guernsey, Isle of Man, Mauritius, Delaware etc.

## **56 Glossary for Annual Tax on Enveloped Dwellings**

The following is a reproduction of Sections 170, 171 and 174 FA 2013. These sections contain a number of definitions of expressions that are used in ATED. In other cases there is a cross reference to the statute for where the term is defined.

### ***56.1 Section 170 - Meaning of “chargeable day” and “within the charge”***

(1) Any day on which the conditions in section 94(2) are met with respect to a single-dwelling interest is a “**chargeable day**” for that interest.

(2) Where a day is a chargeable day as a result of subsection (1), the chargeable person is “**within the charge**” with respect to a single-dwelling interest on that day.

### ***56.2 Section 171 - References to the state of affairs “on” a day***

In determining for the purposes of any provision of this Part whether or not a state of affairs obtains on a particular day, it is to be assumed that the state of affairs obtaining at the end of the day persisted throughout the day.

### **56.3 Section 174 - General interpretation of Part 3**

The references to sections and Schedules in the following are to Finance Act 2013 unless otherwise specified.

(1) In this Part—

“**chargeable day**” (in relation to a single-dwelling interest) is to be read in accordance with section 170;

“**chargeable interest**” has the meaning given by section 107;

“**the chargeable person**” has the meaning given by section 96(2) or (3);

“**closure notice**” has the meaning given by paragraph 16 of Schedule 33;

“**collective investment scheme**” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 235 of that Act);

“**company**” has the meaning given by section 166(1);

“**completion**”, in Scotland, means—

(a) in relation to a lease, when it is executed by the parties (that is to say, by signing) or constituted by any means,

(b) in relation to any other transaction, the settlement of the transaction;

“**discovery assessment**” has the meaning given by paragraph 21 of Schedule 33;

“**EEA UCITS**” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 237 of that Act);

“**excluded rents**” has the meaning given by section 133(6);

“**farming**” has the meaning given by section 148(4);

“**filing date**”, in relation to an annual tax on enveloped dwellings return or a return of the adjusted chargeable amount, has the meaning given by paragraph 58 of Schedule 33;

“**financial institution**” has the meaning given by section 143 (except where otherwise stated);

“**HMRC**” means Her Majesty’s Revenue and Customs;

“**HMRC determination**” has the meaning given by paragraph 18 of Schedule 33;

“**jointly entitled**” means—

(a) in England and Wales, beneficially entitled as joint tenants or tenants in common,

(b) in Scotland, entitled as joint owners or owners in common,

(c) in Northern Ireland, beneficially entitled as joint tenants, tenants in common or coparceners;

“**land**” includes—

(a) buildings and structures, and

(b) land covered by water;

“**market value**” has the meaning given by section 98(8);

“**notice of enquiry**” has the meaning given by paragraph 8 of Schedule 33;

“**open-ended investment company**” has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 236(1) of that Act);

“**participant**”, in relation to a collective investment scheme, has the meaning given by section 98(7);

“**partnership**” has the meaning given by section 167;

“**property development trade**” has the meaning given by section 138(4);

“**property rental business**” has the meaning given by section 133(4);

“**property trading business**” has the meaning given by section 141(3);

“**qualifying property rental business**” has the meaning given by section 133(3);

**“self assessment”** has the meaning given by section 161(3);  
**“tax”** means tax under this Part;  
**“trade”** has the same meaning as in section 35 of CTA 2009 (and cognate expressions are to be read accordingly);  
**“unit trust scheme”** has the same meaning as in Part 17 of the Financial Services and Markets Act 2000 (see section 237(1) of that Act).

(2) In this Part—  
references to the **“adjusted chargeable amount”**, in relation to a person on whom tax is charged for a chargeable period with respect to a single-dwelling interest, are to be read in accordance with section 105;  
references to an **“annual tax on enveloped dwellings return”** are to be read in accordance with section 159(4);  
references to the **“daily amount”** for a day are to be read in accordance with section 105(2);  
references to **“delivery”**, in relation to an annual tax on enveloped dwellings return, are to be read in accordance with paragraph 2 of Schedule 33;  
references to the **“effective date”** of an acquisition are to be read in accordance with section 121(4);  
references to the **“effective date”** of a disposal are to be read in accordance with section 121(5);  
references to a **“major interest”** in land are to be read in accordance with section 117 of FA 2003;  
references to a **“return of the adjusted chargeable amount”** are to be read in accordance with section 160(6);  
references to meeting the **“ownership condition”** are to be read in accordance with section 94(4) to (6);  
references to being **“within the charge”** with respect to a single-dwelling interest are to be read in accordance with section 170.

## 57 Appendix

Below are the relevant sections reproduced from Corporation Tax Act 2010 which apply to determine whether persons are connected or whether they are associates. The legislation produced here is correct pre Finance Act 2013 and reference should be made to the legislation in force at the relevant time for considering these provisions for the purposes of ATED.

### **Section 1122 Corporation Tax Act 2010** **“Connected” persons**

- (1) This section has effect for the purposes of the provisions of the Corporation Tax Acts which apply this section (or to which this section is applied).
- (2) A company is connected with another company if—
- (a) the same person has control of both companies,
  - (b) a person (“A”) has control of one company and persons connected with A have control of the other company,
  - (c) A has control of one company and A together with persons connected with A have control of the other company, or
  - (d) a group of two or more persons has control of both companies and the groups either consist of the same persons or could be so regarded if (in

one or more cases) a member of either group were replaced by a person with whom the member is connected.

- (3) A company is connected with another person (“A”) if—
  - (a) A has control of the company, or
  - (b) A together with persons connected with A have control of the company.
- (4) In relation to a company, any two or more persons acting together to secure or exercise control of the company are connected with—
  - (a) one another, and
  - (b) any person acting on the directions of any of them to secure or exercise control of the company.
- (5) An individual (“A”) is connected with another individual (“B”) if—
  - (a) A is B’s spouse or civil partner,
  - (b) A is a relative of B,
  - (c) A is the spouse or civil partner of a relative of B,
  - (d) A is a relative of B’s spouse or civil partner, or
  - (e) A is the spouse or civil partner of a relative of B’s spouse or civil partner.
- (6) A person, in the capacity as trustee of a settlement, is connected with—
  - (a) any individual who is a settlor in relation to the settlement,
  - (b) any person connected with such an individual,
  - (c) any close company whose participators include the trustees of the settlement,
  - (d) any non-UK resident company which, if it were UK resident, would be a close company whose participators include the trustees of the settlement,
  - (e) any body corporate controlled (within the meaning of section 1124) by a company within paragraph (c) or (d),
  - (f) if the settlement is the principal settlement in relation to one or more sub-fund settlements, a person in the capacity as trustee of such a sub-fund settlement, and
  - (g) if the settlement is a sub-fund settlement in relation to a principal settlement, a person in the capacity as trustee of any other sub-fund settlements in relation to the principal settlement.
- (7) A person who is a partner in a partnership is connected with—
  - (a) any partner in the partnership,
  - (b) the spouse or civil partner of any individual who is a partner in the partnership, and
  - (c) a relative of any individual who is a partner in the partnership.
- (8) But subsection (7) does not apply in relation to acquisitions or disposals of assets of the partnership pursuant to genuine commercial arrangements.

**Section 1123 Corporation Tax Act 2010**  
**“Connected” persons: supplementary**

- (1) In section 1122 and this section—

“company” includes any body corporate or unincorporated association, but does not include a partnership (and see also subsection (2)),  
“control” is to be read in accordance with sections 450 and 451 (except where otherwise indicated),

“principal settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992,  
“relative” means brother, sister, ancestor or lineal descendant,  
“settlement” has the same meaning as in Chapter 5 of Part 5 of ITTOIA 2005 (see section 620 of that Act), and  
“sub-fund settlement” has the meaning given by paragraph 1 of Schedule 4ZA to TCGA 1992.

- (2) For the purposes of section 1122—
- (a) a unit trust scheme is treated as if it were a company, and
  - (b) the rights of the unit holders are treated as if they were shares in the company.
- (3) For the purposes of section 1122 “trustee”, in the case of a settlement in relation to which there would be no trustees apart from this subsection, means any person—
- (a) in whom the property comprised in the settlement is for the time being vested, or
  - (b) in whom the management of that property is for the time being vested.
- Section 466(4) of ITA 2007 (which applies for the purposes of the Corporation Tax Acts as a result of section 1169 below) does not apply for the purposes of this subsection.
- (4) If any provision of section 1122 provides that a person (“A”) is connected with another person (“B”), it also follows that B is connected with A.

**Section 450 Corporation Tax Act 2010**  
**“Control”**

- (1) This section applies for the purpose of this Part.
- (2) A person (“P”) is treated as having control of a company (“C”) if P—
- (a) exercises,
  - (b) is able to exercise, or
  - (c) is entitled to acquire,
- direct or indirect control over C's affairs.
- (3) In particular, P is treated as having control of C if P possesses or is entitled to acquire—
- (a) the greater part of the share capital or issued share capital of C,
  - (b) the greater part of the voting power in C,
  - (c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or
  - (d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.
- (4) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in subsection (3)(c).
- (5) If two or more persons together satisfy any of the conditions in subsections (2) and (3), they are treated as having control of C.

(6) See also section 451 (section 450: rights to be attributed etc).

**Section 451 Corporation Tax Act 2010**  
**Section 450: rights to be attributed etc**

- (1) This section applies for the purposes of section 450.
- (2) A person is treated as entitled to acquire anything which the person—  
(a) is entitled to acquire at a future date, or  
(b) will at a future date be entitled to acquire.
- (3) If a person—  
(a) possesses any rights or powers on behalf of another person (a), or  
(b) may be required to exercise any rights or powers on A's direction or behalf, those rights or powers are to be attributed to A.
- (4) There may also be attributed to a person all the rights and powers—  
(a) of any company of which the person has, or the person and associates of the person have, control,  
(b) of any two or more companies within paragraph (a),  
(c) of any associate of the person, or  
(d) of any two or more associates of the person.
- (5) The rights and powers which may be attributed under subsection (4)—  
(a) include those attributed to a company or associate under subsection (3), but  
(b) do not include those attributed to an associate under subsection (4).
- (6) Such attributions are to be made under subsection (4) as will result in a company being treated as under the control of 5 or fewer participators if it can be so treated.

**Section 448 Corporation Tax Act 2010**  
**“Associate”**

- (1) In this Part “associate”, in relation to a person (“P”), means—  
(a) any relative or partner of P,  
(b) the trustees of any settlement in relation to which P is a settlor,  
(c) the trustees of any settlement in relation to which any relative of P (living or dead) is or was a settlor,  
(d) if P has an interest in any shares or obligations of a company which are subject to any trust, the trustees of any settlement concerned,  
(e) if P—  
(i) is a company, and  
(ii) has an interest in any shares or obligations of a company which are subject to any trust,  
any other company which has an interest in those shares or obligations,  
(f) if P has an interest in any shares or obligations of a company which are part of the estate of a deceased person, the personal representatives of the deceased, or  
(g) if P—  
(i) is a company, and  
(ii) has an interest in any shares or obligations of a company which are part of the estate of a deceased person,  
any other company which has an interest in those shares or obligations.



- (2) In this section, “relative” means—
- (a) a spouse or civil partner,
  - (b) a parent or remoter forebear,
  - (c) a child or remoter issue, or
  - (d) a brother or sister.

### **Schedule 33 to Finance Act 2013**

#### **Contents of return Schedule 33/Para 1**

(1) An ATED return must be completed (see paragraph 47 of this guidance) and sent to HMRC in a prescribed format which currently means submitting a return electronically or where the chargeable person so chooses, in paper form.

(2) Every return must be signed by a proper officer of the company or someone who has been authorised to act on the company’s behalf. They must declare that the information supplied in the return is correct and complete to the best of their knowledge. This is the case whether the return is an original return, an amended return or a further return (see paragraphs 47 & 48 of this guidance).

#### **Amendment of return Schedule 33/Para 3**

(1) A taxpayer may make an amendment to their return, or their return of an adjusted chargeable amount, at any point within 12 months of the end of the chargeable period to which the amendment relates.

(2) In the event a return was submitted on or after 1 January following the end of the chargeable period to which the amendment relates then the period in which the return can be amended is limited to three months after the date of the return if this is longer.

Returns must be amended by Notice to HMRC. This can be done by submitting an on-line amendment to your return. You should ensure that you tick the relevant box stating that your return is an amended return. Alternatively you can write to us attaching the return pages that you want to change. You should ensure that you clearly state that you are submitting an amendment to your original return.

You should write to us at: ATED Processing Team, 5<sup>th</sup> Floor, Crown House, Birch Street, Wolverhampton, West Midlands WV1 4JX.

#### **Correction of return Schedule 33/S4**

(1) HMRC may correct an obvious error or omission in a return (for example an arithmetical mistake or an error of principle) provided they inform the taxpayer of the change. Any such correction has the effect of amending the return. However; the taxpayer may reject the correction by either submitting an amended return within the normal time limits or writing to HMRC (at the address shown above) where the normal time limit has expired.

(2) A correction by HMRC must be made within 9 months of the date the return or amended return was received.

(3) If the taxpayer rejects the correction by writing to HMRC (because they are outside the time limit for making an amendment) then they have 3 months from the date the correction was issued in which to do so.

### **Record Keeping Schedule 33/Para 5**

(1) Where a taxpayer comes within the charge to ATED, they must retain the records which enabled them to complete their return for 6 years following the end of the chargeable period, or if later the date any enquiry into an ATED return has been completed or the enquiry window has closed.

(2) Records required to be retained include details of

- (a) any relevant transactions (contracts or conveyance and any supporting maps, plans, etc)
- (b) records of any relevant payments, receipts and financial arrangements
- (c) valuations and

any supporting documents such as accounts, books, deeds, contracts, vouchers and receipts.

(3) Records may be retained in paper or electronic form.

(4) Failure to retain records will result in a maximum penalty charge of £3,000.

### **Enquiries Schedule 33/Para 8**

(1) HMRC may enquire into a return provided a 'notice of enquiry' is issued to the taxpayer within 12 months of the later of

- (a) the filing date
- (b) the date the return was submitted
- (c) the date any amendment was made

(2) HMRC can only enquire once into a return or amendment to a return.

(3) An enquiry can be made in relation to anything which is contained in the return/amended return, or required to be contained in the return/amended return that establishes the taxpayers charge to ATED.

(4) If during an enquiry into a return or amended return, HMRC believes that ATED has been underpaid then an amended assessment may be issued to increase the charge.

(5) At any point during an enquiry, a joint application may be made to the tribunal service for a determination of disputed issue/issues. Should a referral to the tribunal become no longer necessary then either party may withdraw the application.

(6) During the course of a referral to the tribunal service, no closure notice may be issued by HMRC and no application for closure may be made by the taxpayer.

(7) Any determination by the tribunal service is binding on both parties and is only appealable on a point of law.

(8) Where the referral relates to the market value of an interest in a dwelling, it should be made to

- (a) the Upper Tribunal, if the land is in England and Wales
- (b) the Lands Tribunal for Scotland, if the land is in Scotland
- (c) the Lands Tribunal for Northern Ireland, if the land is in Northern Ireland.

(9) Other issues will be dealt with by the First-tier Tribunal or where appropriate the Upper Tribunal.

(10) An enquiry is only finalised when a 'closure notice' has been issued to the taxpayer HMRC detailing the conclusions reached. The notice will make the appropriate amendment to the return or state that no amendment is required.

(11) During the course of an enquiry the taxpayer may apply to the tribunal service requesting the issue of a direction to close the enquiry within a specified time limit. The tribunal must give such a direction unless they are satisfied that HMRC have reasonable grounds for keeping the enquiry open.

### **HMRC Determination Schedule 33/Para 18**

(1) HMRC may make a 'HMRC determination' in cases where they believe an ATED return should have been filed (and the filing date has passed) and where they believe additional tax is due in respect of an adjustable chargeable amount (and the filing date has passed).

(2) The determination will be issued to the taxpayer based on the information held by HMRC and the amount HMRC believe to be due. The notice of determination must be given to the taxpayer and state the date on which it is issued. The maximum period for making such a determination is 4 years after the end of the chargeable period to which it relates.

(3) In cases where a HMRC determination is made, it will be governed by the same enforcement rules as if it were a self-assessment ([See schedule 12 FA 2003](#)). The taxpayer may also be subject to a penalty for failing to file a return. However, if the taxpayer submits a return following the issue of a determination, this will displace the determination provided it is submitted within the 4 year period or 12 months after the issue of the determination, whichever is the later.

(4) Where proceedings have begun to recover the tax assessed by a HMRC determination, these will continue even if the taxpayer submits a return. The tax recovered being limited to the amount self-assessed by the taxpayer.

### **HMRC Assessments Schedule 33/Para 21**

(1) Where HMRC believe that insufficient tax has been paid in respect of ATED, they may raise a 'discovery assessment' to recover the unpaid tax. For example where

- a taxpayer has failed to submit an ATED return
- the amount paid is insufficient or becomes insufficient, perhaps because of an incorrect valuation or the wrong banding being used, or
- a relief has been claimed which is not due for the whole or part of the chargeable period.

(2) Similarly, if a repayment of tax has been made incorrectly, HMRC may recover the overpayment by raising an assessment. This will include any interest which may have been paid as part of the repayment.

(3) However, where a return has been submitted, HMRC will only be able to raise a discovery assessment where the underpayment was a result of careless or deliberate action by

- (a) the taxpayer
- (b) a person acting on behalf of the taxpayer, or
- (c) a person who was a partner of the taxpayer when the return was submitted.

(4) Or where, HMRC being in possession of the relevant information could not reasonably be expected to have acted on it prior to the closure of the enquiry window or completion of any open enquiry.

(5) Information will be regarded as being in HMRC's possession where

- it is contained within a return
- it is contained within information submitted by the taxpayer or their representative
- it is contained within any documents or information submitted in relation to an enquiry into a return, or
- where HMRC could have been reasonably expected to infer the relevance of the information supplied within the return or as part of an open enquiry.

(6) In addition HMRC are unable to raise a discovery assessment where tax has been underpaid due to a mistake in the return as to the calculation of tax or where the tax was based on a generally prevailing practice or basis.

### **Time Limits for Assessments Schedule 33/Para 25/Para 26**

1) While the general time limit for making assessments is 4 years after the end of the chargeable period, where an underpayment is as a result of carelessness on the part of the taxpayer (or their agent) an assessment may be raised up to 6 years after the end of the chargeable period.

2) Further, an assessment may be made up to 20 years after the end of the chargeable period where the underpayment is as a result by a deliberate action, there is a failure to submit an ATED return or where the taxpayer has failed to notify HMRC that they are party to a tax avoidance scheme.

3) An assessment to recover tax due as a result of a repayment may be made at any time during the course of an enquiry into a return or within one year from the date the repayment was made.

4) In the event of the death of a taxpayer, an assessment on the personal representative must be made within 4 years of the date of death and in the case of carelessness; HMRC will not seek to assess an underpayment more than 6 years before the date of death.

5) A taxpayer can only appeal against an assessment on the basis that the time limits have expired by appealing against the assessment itself.

6) HMRC regard 'carelessness' as a failure to take reasonable care which results in a loss of tax due to the provision of inaccurate information. This could be information supplied to HMRC (by the taxpayer or their representative) and the non-correction of inaccurate information at a later date.

7) HMRC regard 'deliberately' as a loss of tax brought about by a deliberate inaccuracy in an document or information supplied to HMRC.

### **Issue of Assessments Schedule 33/Para 27**

A notice of assessment must be sent to the taxpayer, detailing the tax due, the date on which the notice is issued and the time limit for any appeal against the notice.

### **Claims for Relief of Overpaid Tax Schedule 33/Para 28**

(1) Where a taxpayer believes they have been assessed twice in respect of the same dwelling or that they are not within the charge to ATED, they may make a claim to HMRC for the amount to be repaid or discharged.

(2) HMRC are unable to effect a repayment or discharge in the following circumstances

- the overpayment has arisen due to a mistake in a claim or failure to make a claim
- the taxpayer is able to claim a repayment by other means
- the taxpayer failed to make a claim within the correct time limits
- the charge is/was the subject of an appeal
- the charge was determined by agreement between HMRC and the taxpayer
- the charge was calculated in accordance with a practice generally prevailing (this excludes tax paid contrary to EU law)

(3) A claim must be made within 4 years after the end of the chargeable period and should be separate from the return.

(4) In the case of partnerships, only the nominated partner may make a claim.

(5) Where a claim is made and the grounds for the claim give rise to grounds for a discovery assessment, then the restricted time limits [Finance Act 2013 -Schedule 33 \(Part 5\)](#) are disregarded and a discovery assessment may be made at any time before the claim is finally determined.

### **Contract Settlements Schedule 33/Para 34**

(1) Where a signed agreement has been reached between a taxpayer and HMRC (contract settlement), a relief claim may still be made. Where the amount paid under the contract settlement was made by other than the taxpayer, they are regarded as one and the same for a claim to relief in respect of a contract settlement.

(2) Where the claim gives grounds for the issue of a discovery assessment, HMRC may use any excess tax collected as part of the contract settlement, to satisfy the tax due on the subsequent discovery assessment.

### **Appeals & Reviews Schedule 33/Para 35**

(1) A taxpayer may appeal against

- an amendment made during an enquiry (the taxpayer has no right of review where an enquiry is in progress)
- an amendment following a closure notice
- a determination in the absence of a return (the grounds for such an appeal are limited to non satisfaction of the conditions which must exist for a charge to ATED- see section 1 of this guidance)
- a discovery assessment
- an assessment to recover an over repayment.

(2) The appeal must be made in writing to HMRC within 30 days of the issue of any of the above and must state the grounds for the appeal.

(3) A late appeal will only be accepted by agreement with HMRC or where a tribunal directs. HMRC will accept a late appeal where they are satisfied there was a reasonable excuse for the appeal not being lodged within the 30 day time limit and the request for the late appeal was made without unreasonable delay.

(4) HMRC will confirm whether they have accepted the late appeal or not.

#### **Following Notice of Appeal Schedule 33/Para 38**

(1) Where an appeal has been accepted, the appellant may request HMRC carry out a review of the case ([See para 39, section 7 \(Page 422\)](#)). HMRC may offer to carry out a review ([See para 40, section 7 \(Page 422\)](#)) or the appeal may be listed for the tribunal to determine the matter in dispute.

(2) There are limited circumstances in which an appeal can be notified to the tribunal where a review has been requested or offered ([See para 43 & 44, section 7 \(Page 424\)](#))

(3) An appeal can be settled by agreement at any time during the appeal process.

#### **Appellant requests a review Schedule 33/Para 39**

(1) If the appellant requests a review HMRC must issue a view of the matter within 30 days of having received the request, or longer if reasonable.

(2) However, where the appellant has already requested a review on the same point, HMRC has offered a review or the matter has been referred to the tribunal then HMRC are not bound to provide a view.

#### **HMRC offers a review Schedule 33/Para 40**

(1) Any offer must be accepted by the appellant within 30 days from the date the offer was made. The notification must include a statement of HMRC's view of the matter in dispute.

(2) If the appellant does not accept the offer of a review, then HMRC's view of the matter in dispute is treated as if it were part of a settlement agreement ([See para 40, section 7 \(Page 425\)](#)) and there is no right to withdraw from the agreement. The exception to this is where the appellant refers the matter to a tribunal.

(3) However, HMRC may not offer a review where they have already issued an offer to review on the same issue, the appellant has asked for a review or the matter has been referred to the tribunal.

#### **Nature of Review Schedule 33/Para 41**

(1) Whether the appellant has asked for a review or one has been offered by HMRC, they are both conducted in the same manner.

(2) The nature and extent of the review must be commensurate with the issue and account must be taken of the efforts of both parties to resolve the issue prior to the review. HMRC must ensure that they take the time to consider all the representations made by the appellant.

(3) The review must be concluded within 45 days (or by agreement a longer period) from the date the appellant accepted the review offer or the date HMRC notified their view. At the conclusion of the review, HMRC will decide whether their view upheld, varied or cancelled. If HMRC fail to issue a notice of their conclusion within the time limits set, then it will be taken that HMRC's view is upheld and they must notify the appellant accordingly.

#### **Effect of Conclusions Schedule 33/Para 42**

Where HMRC has given a notice of conclusion, it has the same effect as if both parties had entered into a settlement agreement and cannot be varied unless the matter is referred to the tribunal.

#### **Appeal to Tribunal after appellant has requested a Review Schedule 33/Para 43**

Where a review has been carried out, the appellant cannot refer the matter to a tribunal until the commencement of the post-review period and only then if the tribunal permits the referral. The post-review period is 30 days from the date HMRC notify the appellant of their conclusions (or where HMRC have failed to give a conclusion, 30 days following the issue of HMRC's view or the appellants acceptance of HMRC's offer to review ([See para 40, section 7 \(Page 423\)](#))).

#### **Appeal to Tribunal after HMRC have offered a Review Schedule 33/Para 44**

(1) Where the appellant **has** accepted the offer of a review they may not refer the matter to the tribunal until the post-review period commences (30 days from the date from the date HMRC notify the appellant of their conclusions; or where HMRC has failed to give a conclusion, 30 days following the issue of HMRC's view or the appellants acceptance).

(2) Where the appellant has **not** accepted the offer they may request a referral to the tribunal within the acceptance period (30 days from the date of HMRC's offer to review).

(3) In both cases it is for the tribunal to decide whether they accept the Referral

(4) All notifications relating to reviews must be made in writing and where there is someone acting on the appellants behalf, a copy of any notification should be sent to them in addition to the appellant.

### **Settling of appeals by agreement Schedule 33/Para 46**

(1) Where an appeal has yet to be determined, it is possible for the matter to be settled by agreement between the appellant (or someone acting on their behalf) and HMRC. The agreement will state whether the decision appealed against should be upheld, varied, discharged or cancelled. The agreement has the same force as if it had been decided by a tribunal.

(2) If following an agreement the appellant changes their mind, they have 30 days in which to write to HMRC advising they wish to withdraw.

(3) Where an agreement has been reached verbally, it will only be enforceable where it has subsequently been confirmed in writing by either the appellant (or someone acting on their behalf) or HMRC.

(4) Where the appellant (or someone acting on their behalf) withdraws their appeal and HMRC do not object in writing to the withdrawal (within a period of 30 days) then the matter under appeal will be treated as being upheld.

### **Postponement of tax Schedule 33/Para 47/48/49**

(1) Any tax due remains due and payable whether an appeal has been made or not. However, where the appellant believes that the assessment, notice or amendment under dispute is excessive, they may apply in writing to HMRC (within 30 days of the assessment, etc. being issued) to postpone the amount in dispute.

(2) If the appellant does not agree the amount postponed, they have 30 days from the date HMRC issued their determination in which to refer the postponement application to the tribunal. The appellant must state the amount they believe is overcharged and the grounds for that belief.

(3) The 30 day period in which an application may be made can be extended where there is a change of circumstances affecting the amount the appellant believes to be overcharged. In addition, if either party has reason to believe the determination of the postponed amount is incorrect due to a change of circumstance, they may apply again to the tribunal for a further determination (provided the appeal itself has not been determined).

**N.B** An application to postpone ATED is subject to the provisions of [Part 5 TMA 1970 \(in particular Section 48\(2\) \(b\)\)](#).

(4) Any un-postponed amount will remain recoverable.

(5) HMRC and the appellant (or someone acting on their behalf) may agree the amount to be postponed without referral to the tribunal without prejudice to the making of further agreement or determination. Where the agreement is verbal, it will only become effective when HMRC or the appellant confirm the terms in writing.

### **Assessments and self assessments Schedule 33/Para 50**

(1) Where an appeal has been made to the tribunal, they will decide whether the tax assessed should be altered or not and will issue a determination accordingly. The decision of the tribunal is final and conclusive unless they are requested to review a decision within the grounds give at sections 9 to 14 of the Tribunals, Courts and



Enforcement Act 2007. [Section 9 to 14 of the Tribunals, Courts and Enforcement Act 2007](#)

(2) On the issue of a determination by the tribunal the tax charged will be adjusted. Where the tribunal decide that the assessment is excessive a repayment will be made and similarly if they decide that the assessment is insufficient, a further charge will be raised. In the event that a postponement of tax was agreed pending the outcome of the tribunal, any tax due will be released for collection.

(3) This will remain the case even where a further appeal is made to the Tribunal. However, if it is later decided that the amount originally determined was excessive, interest will be paid on the amount overpaid. Where it is decided too little tax has been charged, a further assessment will be raised and the payment will be due 30 days after the tribunal decision is issued.

### **Supplementary provisions**

#### **Cases involving joint liability to Tax Schedule 33/Para 55**

- 1) An obligation under FA13/S97 (see paragraph 4 of this guidance) is a joint obligation and a single return is required.
- 2) In the case of a partnership, any requirement under Schedule 33 or FA13/159 & 160 (see paragraphs 47 & 48 of this guidance) is equally required of all the responsible partners.
- 3) For the purposes of Schedule 33 a 'return' is an annual tax on enveloped properties return or a return of the adjusted chargeable amount (unless the contrary is indicated).
- 4) The 'filing date' in relation to a return is the end of the day the return is due.

#### **Schedule 34 Part 1 Information and Enforcement**

Schedule 36 to FA 2008 has been extended to include annual tax on enveloped dwellings. [Schedule 36 to FA 2008](#)

#### **Schedule 34 Part 2 Penalties**

- 1) Schedule 24 to FA 2007 has been extended to include annual tax on enveloped dwellings. [Schedule 24 to FA 2007](#)
- 2) Schedule 55 to FA 2009 has been extended to include annual tax on enveloped dwellings. [Schedule 55 FA 2009](#)
- 3) Schedule 56 to FA 2009 has been extended to include annual tax on enveloped dwellings. [Schedule 56 to FA 2009](#)

#### **Schedule 35 Part 1 Miscellaneous Amendments**

- 1) The Provisional Collection of Taxes Act 1968 has been extended to include the Annual Tax on Enveloped Dwellings. [Provisional Collection of Taxes Act 1968](#)

2) Section 318(1) FA 2004 has been extended to include Annual Tax on Enveloped Dwellings [Section 318\(1\) FA 2004](#)

3) Paragraph 7 of Schedule 6 to FA 2010 has been amended to include Annual Tax on Enveloped Dwellings. [Para 7 Section 6 to FA 2010](#)

**Schedule 35 Part 2 Transition rules for first chargeable period**

See [52 Application of Provisions – Companies FA13/S166](#)

**Regulation 3 Information to be contained in an ATED return**

See the return guidance. [ATED Return Notice](#)