

ATED: What is it and how does it affect charities?

30 OCTOBER 2013

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What is ATED?

This is a tax that was introduced with effect from April 2013 and applies to companies (and similar kinds of structures) which own dwellings with an individual value of £2 million upwards. The purpose of the tax was to eliminate any tax advantage in holding residential property in corporate 'envelopes' as distinct from the more usual holding of it in the name of individuals. This is an annual tax, and runs alongside and in addition to the increased rate of SDLT on such 'enveloped' residential properties.

How does it affect charities?

There is a charitable exemption from the tax. This does not extend to wholly owned subsidiaries of charities, since the company in question has to be 'a charitable company'.

In order to qualify for the relief, the charity must hold the interest for one of two purposes. Either it must be used for the furtherance of the charitable purposes of either the charitable company or of another charity (note, not its subsidiary), or held as an investment from which the profits will be applied to the holder's charitable purposes. In other words, this is extremely similar to the familiar SDLT exemption for charities. It is clearly based upon that model.

There are anti-avoidance provisions aimed at ensuring that individuals do not give qualifying properties to charity only to continue to use them for their own residential purposes. This comes with detailed 'related party' qualifications. There is an exclusion from the anti-avoidance provisions, however, for historic houses which are open to the public or are intended to be made open to the public. Otherwise this precludes relying on a 'lifetime legacy' type structure.

Charitable property development

Charities, or their wholly owned subsidiaries, often carry out property development to realise the value in their assets. ATED is not intended to tax development in general terms, and there are reliefs for developers which can apply to charities and their subsidiaries accordingly. There is a specific carve-out for properties held for the purposes of such property development. The interest must be held exclusively for the purpose of developing and re-selling the 'land' in the course of the trade. But the exclusion does not apply where certain individuals are in occupation of the property, so care needs to be exercised.

However, there is a danger in a subsidiary of a charity holding property after the development period. There is a further relief for the holding of property as a registered social landlord, or indeed as a private rental company, but any failure to fall within those particular reliefs could render the charitable subsidiary company exposed to the tax if it holds property beyond the reasonable horizon of development of such 'stock in trade'.

Potential trap on staff-occupied dwellings

Whilst the following scenario appears marginal (given the value threshold), the charitable relief does appear to extend to the use of charity owned dwellings by staff who need to be on site (for example, a caretaker) in order for the property to be used for charitable purposes. One can expect HMRC to look into these circumstances in detail however. That position might be tainted if, for any reason, the occupant happened also to be a donor to the charity. It is not unusual for employees to make modest donations. Any donation (even if not of the property itself) technically precludes the relief from applying. However, the relevant regulation provides exclusion from this threat if it can be shown that the donation being made is unconnected with the provision of the dwelling (and thus the individual would have used the dwelling with or without a donation being made). However, this may be a difficult test to apply. It can be predicted that this may be an area where disputes with HMRC will arise.

General Thoughts

ATED is clearly relevant to charities, but there is a broad charity relief that can apply if care is exercised, and there are reliefs for letting activities that apply more broadly still. Nonetheless, care needs to be exercised particularly where a subsidiary company is deployed

Charities that are interested in exploring the issues further should contact Graham Elliott on +44(0)20 7597 6112 or Jeremy Wakeham on +44 (0)20 7597 6177.

Authors

Graham Elliott

CONSULTANT | LONDON

International corporate tax

 +44 20 7597 6112

 graham.elliott@withersworldwide.com

Jeremy Wakeham

PARTNER | LONDON

Real estate

 +44 20 7597 6177

 jeremy.wakeham@withersworldwide.com