



Stamp Duty Land Tax (SDLT) and Annual Tax on Enveloped Dwellings (ATED) Clauses 87-91

Executive Summary

We have two main areas of concern in relation to these clauses:

Clause 87 – There is a need to evaluate the temporary SDLT cut to ensure it is cost-effective as a previous temporary rate reduction in 2010-2012 appeared to lead to higher prices for home buyers.

Clause 88 - The mechanism for applying the non-resident SDLT surcharge to UK resident companies controlled by non-residents is disproportionately complex especially for conveyancers, most of whom are not tax specialists, who will need to apply the tests. The complexity carries the significant risk that the rules will not be understood or followed. A simpler test would look at ultimate beneficial ownership.

1 Clause 87: Temporary period for reduced SDLT rates on residential property

- 1.1 The purpose of the temporary reduction in rates announced on 8 July 2020, via the increase in the SDLT nil rate band for residential property sales from £125,000 to £500,000, was to revive the housing market and stimulate household consumption against the background of falling property transactions in the COVID-19 lockdown. The new measure extends the temporary increase to 30 June 2021 followed by a further temporary relief period from 1 July 2021 to 30 September 2021 when the nil rate band will be £250,000.
- 1.2 The tapered transition back to pre-pandemic rates should take some of the bottlenecks out of the system for house buyers wishing to complete transactions before the increased nil rate band expires altogether although with some added complexity because different rate bands apply at different times.
- 1.3 Although the economy still needs support, it is important the government publishes the economic analysis to show the further extension is cost effective¹ and not simply absorbed in increased house prices. A 2011 evaluation of a previous temporary stimulant for first-time

¹ The policy costing indicates a cost of £255m in 2020/21 rising to £1350m 2021/22.

buyers on transactions between March 2010 and 2012 concluded the majority of the 1 per cent tax relief was in fact capitalised in higher prices.²

- 1.4 The increased nil rate band applies to both the main rate of SDLT and the surcharge rate of 3% for purchase of additional properties such as second homes or buy to lets. The aim of that surcharge was to increase supply for first time buyers or for home owners moving from one main residence to another by imposing an additional SDLT cost on buyers of second homes or for investment. Increasing the threshold for the 3% surcharge stimulates purchases by the second category of buyers as well as the first, contrary to the policy behind the surcharge if as a result prices increase for home buyers whom the surcharge was intended to help.

2 Clause 88 and Schedule 16: Increased rates for non-resident transactions

- 2.1 The legislation implements the 2% surcharge on purchases of residential property in England and Northern Ireland by those not resident in the UK with the policy intent of making house prices more affordable for UK residents. Although aimed at non-residents, certain UK resident companies controlled by non-residents are also subject to the surcharge to ensure consistency of treatment between non-UK residents acquiring property directly and those acquiring through UK-resident companies.
- 2.2 We are concerned that the legislative mechanism adopted to achieve this intent (the non-UK control test based on the close company legislation in Chapter 2 of Part 10 of CTA 2010, subject to modifications) is disproportionately complex. Even many practitioners who are specialists in corporation tax consider that the close company rules are complex and difficult to interpret – and the proposed test for the non-resident surcharge adds further levels of complexity. Given that it is conveyancers, most of whom are not tax specialists, who will need to apply the tests there is a significant risk that the rules will not be understood or followed.
- 2.3 We would prefer to see (and recommended in our response to the draft legislation) a simplified test based on the ultimate beneficial ownership, where more than 50% of the company is beneficially owned (ie entitlement to more than 50% of any income or capital on distribution of assets) by non-UK residents – excluding non-resident spouses or civil partners of UK residents and Crown employees and their spouses or civil partners (plus any other relevant exceptions). The SDLT group relief provisions provide a model for tracing ownership in this way. Practitioners are relatively familiar with the principle of ultimate beneficial ownership of UK companies (for example in relation to the PSC register held by Companies House). We think this test would provide a very similar test to that proposed in the draft legislation (which is based on the close company rules) but with the benefit of much less complexity. We consider that adopting such an approach would greatly ease compliance without risking opening up routes for the non-resident surcharge to be avoided in circumstances in which it is intended to apply.
- 2.4 SDLT is becoming an increasingly complex tax, but one handled predominantly by conveyancers, most of whom are not tax specialists. Measures such as restricting interest deductibility for buy to let landlords and the three per cent surcharge on second home buyers and landlords, regardless of their individual merits, have made it more complex over

² <https://www.gov.uk/government/publications/evaluating-the-impact-of-stamp-duty-land-tax-first-time-buyers-relief>

recent years. The measures in clauses 87 and 88 add further complexity. We note the call of the Treasury Committee in its Tax after Coronavirus report for SDLT to be a priority for reform. We agree. There is a need for a comprehensive look at how SDLT, or property taxation more generally, might be reformed.

3 Clause 89 and Schedule 17: Relief from higher rate charge for certain housing co-operatives etc (Stamp Duty Land Tax)
Clause 90: Relief for certain housing co-operatives (Annual Tax on Enveloped Dwellings)
Clause 91: Repayment to certain housing co-operatives: 2020-21 chargeable period (Annual Tax on Enveloped Dwellings)

- 3.1 We welcome these clauses and the schedule, which provide relief from the Annual Tax on Enveloped Dwellings (ATED) and the 15 per cent SDLT charge for the ownership and transfer of property by housing co-operatives that do not have transferable share capital.
- 3.2 We understand that the underlying policy of ATED and the 15% SDLT charge is to deter the transfer of residential property into a corporate structure ('enveloping') to facilitate a later sale of the shares at a lower tax rate (stamp duty on shares applying rather than SDLT). Housing co-operatives would not be able to engage in this type of activity in any case because shares in housing co-operatives are not transferable. We therefore welcome these measures and the fact that relief is backdated to 1 April 2020 (which is what clause 91 does).

4 The Chartered Institute of Taxation

- 4.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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The Chartered Institute of Taxation
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