

Enveloped property

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Vanessa Crawley looks at what needs to be done to ensure that the sale of an enveloped property complies with the law

I have a client who wishes to sell a property that is enveloped in a company. Given HMRC scrutiny in this area, what needs to be done to ensure this sale complies with the law?

This year's budget saw the Chancellor continue to focus on high-value residential property (HVRP) owned by companies, partnerships with corporate members or collective investment schemes. HVRP is defined as that being worth more than ?500,000, though until 1 April the threshold was ?1m. The Chancellor's objective in targeting HVRP appears to be to tackle tax avoidance head on, in particular stamp duty land tax (SDLT) avoidance.

The [Finance Act 2013](#) introduced an annual tax on enveloped dwellings (ATED) to deter individuals from using UK companies to acquire or hold HVRP. A 15% SDLT rate for HVRP was introduced by the previous [Finance Act in 2012](#).

Where a company is the registered owner of a property, the shareholders may look to sell shares in the company rather than the property, thereby avoiding SDLT. Expanding the reach of this tax regime is presumably aimed at discouraging ownership of properties in such a way. Therefore, as may be the case here, many owners of companies both onshore and offshore will be considering the alternative options available to them, given that the benefits of owning and buying property in a company are diminishing.

ATED applies over chargeable periods of 12 months and arises if, during that period, a company, partnership or collective investment scheme meets the ownership condition in respect of a single-dwelling interest. This raises 2 questions.

- What is the "ownership condition"? This relates to the beneficial ownership or entitlement to a single-dwelling interest.
- What is a "single-dwelling interest"? It is a chargeable interest in a single dwelling, being an estate, interest, right or power ? or the benefit of the same ? in or over land in the UK.

If triggered, the ATED is based on the annual chargeable amount, subject to the taxable value of the single-dwelling interest, and on the number of chargeable days during the relevant period.

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There are, however, reliefs and exemptions available to you and your client that can help limit the application of ATED in respect of genuine commercial activities. For example, the property rental business relief may apply if the single-dwelling interest is held for the purposes of a property rental business operated on a commercial basis. Similarly, the property rental business (special) relief may apply if a single-dwelling interest held for the purposes of property rental is unoccupied pending sale, demolition or conversion.

It may be possible to 'de-envelop' enveloped property or take it out of the company, but I would advise that this is not a simple matter and is likely to incur some UK tax. Options for transferring the property out of a company may include the following.

- A resolution can be passed to put the company into voluntary liquidation, providing that it has no debts or liabilities, and passing a distribution in specie of the property to transfer it to an individual. It is important to confirm that the company has the authority to make such a distribution in specie, and that it has sufficient distributable reserves to declare it.
- An outstanding debt of the company, such as a loan by a shareholder, can be cancelled in favour of transferring the property to that shareholder. This may, however, lead to the shareholder assuming a debt to a third party.

There may in some cases be reasons to keep a property enveloped and pay the ATED charge annually rather than trigger a disposal when de-enveloping. It will be important to obtain specific legal advice in respect of the company's article of association and the procedures involved, and the advice of a tax specialist should also be obtained to carry out hypothetical calculations before taking any further action.

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Further information

Related competencies include: [Taxation](#)

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