

By email: ated.consultation@hmrc.gsi.gov.uk

16 Sept 2014

Dear Sir/Madam



ATED: Reducing the Administrative Burden for Business

Introduction

The British Property Federation (BPF) is the voice of property in the UK, representing businesses owning, managing and investing in property. This includes a broad range of businesses comprising property developers and owners, financial institutions, corporate and local private landlords and those professions that support the industry.

We welcome the opportunity to respond to the government's consultation on reducing the administrative burden of ATED on businesses.

Executive summary

- **We are delighted that the government is consulting on reducing the administrative burden of ATED.** Despite in the main being specifically exempt from the tax, many real estate investors and developers still face the unwelcome compliance burden of having to collate large amounts of data and submit multiple returns. The options proposed in the consultation are therefore helpful but could go further to more significantly reduce the compliance burden imposed on such businesses.
- **A careful balance must be struck between anti-avoidance and the burden of tax compliance.** We understand that the population of non-resident owners of residential property in the UK is relatively unknown and therefore appreciate HMRC's caution in relaxing reporting requirements. However, imposing unnecessary compliance burdens on largely exempt genuine property businesses does not address this risk.
- **Where companies already have a relationship with HMRC (e.g. through Corporation Tax or the non-resident landlord scheme),** the government should consider whether a simplified compliance process could be offered to these companies. We appreciate that the compliance rules may need to be different and perhaps more stringent where a company is new to the ATED regime or does not already have a relationship with HMRC.
- **ATED is based on a chargeable period, rather than a single point in time. It would therefore make sense to report on and pay tax retrospectively.** This would make it more consistent with other taxes based on a chargeable period, such as Corporation Tax, and enable companies to complete a single annual return based on accurate historic data.

Detailed responses to the questions raised in the consultation paper are included at **Appendix 1**.

We remain at your disposal should you have any questions or require further details.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Ion Fletcher', is written over a light blue horizontal line.

Ion Fletcher

Director of Policy (Finance), BPF

Appendix 1: Responses to consultation questions

General comments
<p>We appreciate that HMRC are concerned about non-compliance with ATED, particularly in respect of the relatively unknown population of non-resident owners of residential property in the UK. However, imposing compliance burdens on exempt property businesses will not address the risk of non-compliance among that population. It will be necessary to strike a balance between addressing genuine avoidance risks and imposing proportionate compliance obligations on businesses.</p> <p>We understand that the majority of ATED-exempt businesses are likely to have a relationship with HMRC already, either through Corporation Tax or the Non-Resident Landlord scheme. Therefore, we agree that this could be a useful starting point in identifying which exempt companies should be eligible for a simplified compliance process.</p>
Option 1
Q1: What, if any, problems do you see with this approach?
<p>We consider that option 1 represents a small improvement to the current system but it does not go far enough. While the number of returns to be submitted would be reduced, the level of work required to collate data and ensure compliance would remain the same. In particular, for those companies with mixed use developments, valuations are often obtained for the whole building, rather than the individual residential dwellings within the building. Therefore, the requirement to obtain a valuation for each of the residential properties is an additional cost and administrative burden for these companies. Given that no tax will be due on the basis that the company itself is exempt, it seems wholly disproportionate to require the company to collate and report this information.</p>
Q2: Should this option be adopted, are you content that the statement or balancing return should be submitted by the 30 April in the next chargeable period?
<p>We consider that the deadline to submit the supplementary return by 30 April the following period (i.e. within 30 days of the end of the previous chargeable period) does not give enough time to collate the necessary data. In particular, where a company's portfolio changes towards the end of the previous period (i.e. circa 30th March), they would only have a month to collate the necessary data and perform the compliance on these properties, which is in our view insufficient.</p> <p>Should the Government chose to go with option 1, it would be sensible to incorporate the annual reporting process with the Corporation Tax or NRL schemes – or at least the reporting and payment deadlines should be consistent with these taxes. Further, we think the initial return submitted at the beginning of the period becomes redundant where a final return reflecting accurate historical data is made retrospectively.</p>
Q3: Do you agree that only those claiming the same relief for multiple properties should be included in this option?
<p>We agree that the benefits of this approach would be greatest for those companies that hold multiple properties. However, for the sake of simplicity, we do not consider that it would be unreasonable for those with one property to follow the same process.</p>
Option 2
Q4: What, if any, problems do you see with this approach?
<p>We consider that this option represents a greater reduction in the administrative burden for business than Option 1, but we firmly believe there is scope for further simplification. Please see</p>

our response to question 5 for more details.

Q5: What criteria do you suggest are adopted in order for customers to apply for and be granted exempt status?

We support the suggestion in section 4.11 of the consultation whereby a simplified exempt status regime would primarily be available to those customers who already have a relationship with HMRC e.g. through the corporation tax or non-resident landlord scheme. It seems sensible to assume that the majority of exempt property businesses are likely to be within one of those two regimes in order to declare any rental income or development profits derived from UK property.

In order to be granted exempt status, we would suggest that the companies should submit a signed declaration to HMRC confirming the following:

- i) The company confirms that it performs a qualifying exempt business (they can disclose the relevant activity performed or reason they qualify for an exemption);
- ii) The company confirms that none of its properties are used by related parties, or, if applicable, any properties which are used by related parties will be disclosed separately and any tax due will be paid; and
- iii) The company agrees to notify HMRC of any relevant change in circumstances.

Further, it would be very helpful if groups of companies are allowed to submit a single return confirming the ATED status of all group members under a single declaration.

We are concerned by the suggestion in section 4.8 and 4.9 of the consultation which suggests that companies will be required to keep a “full record” of all those properties within the ATED charge which HMRC would have the power to request details of. It would be useful to know what level of detail HMRC would expect in respect of a ‘full record’ of data and indeed why HMRC believes such records need to be kept at all by a company that is exempt from the tax.

We think it would be reasonable for a company to have to prove – if asked by HMRC – that it performs a qualifying exempt business and that none of its properties are let out to related parties.

Q6: Do you agree that continued entitlement to the status should be confirmed periodically and if so, how frequently?

It should not in principle be necessary for companies to confirm periodically that they are entitled to exempt status. A company (or group of companies) should be obliged to submit a one off exempt status return and notify HMRC if their situation changes. HMRC can periodically ask companies or groups to reconfirm their status if required.

However, as long as the process for confirming exempt status is relatively simple (e.g. as proposed in our response to question 5), we do not think it would be too onerous for companies or groups to re-confirm their status periodically or even annually if that would give HMRC more comfort over compliance.

Q7: Which of the two options do you prefer and why?

We prefer option 2 because it represents a more significant reduction to the administrative burden. However, we would prefer this to go further to more significantly reduce the administrative burden for businesses. We consider that a simple return declaring their exempt status of the company or the group should be sufficient, as outlined in the response to question 5.

However, we would like to better understand why HMRC suggests that exempt companies should

still be required to keep a “full record” of all properties within the ATED charge. It is reasonable for a company to be required to prove that they perform a qualifying exempt business and do not let their properties to related parties but a requirement to retain any level of information above this will not result in much of a reduction in the administrative burden. We agree that this simplified compliance process could be open to companies who are already submitting Corporation Tax or Non-Resident Landlord returns in the first instance.

Q8: Is there an alternative date or trigger which could be adopted and would provide certainty and consistency in the case of newly constructed dwellings or dwellings produced from other dwellings?

We agree with HMRC’s assessment that there can be a delay in establishing at what date a property comes within the charge to Council Tax; moreover, there is a lack of consistency over the application of council tax bands across local authorities.

The date of ‘practical completion’ is a potential alternative which we understand is widely understood in the industry. A certificate of practical completion is normally issued by a quantity surveyor to confirm the date of practical completion of a property. Typically, a developer will only be paid when the certificate of practical completion is issued; therefore the developer has an incentive to ensure that the certificate of practical completion is issued promptly after work is completed. The trigger date for a property to fall within ATED could be the earlier of the date of practical completion or the date the property is let out. We anticipate that this trigger date will particularly impact on the house building industry so we would recommend seeking their views on alternative trigger dates.

Q9: Do you have any suggestions as to how to ensure that the changes announced at Budget 14 are communicated to those who may be affected?

For companies which already have a relationship with HMRC, we understand that a flyer or email update is already sent round to customers updating them on any changes to the tax system. The ATED changes could be included within this communication. It may also be useful to send an update to individuals to the extent that some properties in the charge to ATED will be owned by close companies.

Companies subject to the ATED charge who are currently outside of the UK tax system will be harder to identify and communicate the changes to. If there is a way of identifying corporate owners of residential property under the land registry database or SDLT system, this could be a useful starting point to identify who to send communications to. Professional advisers and industry trade bodies may also be able to communicate the relevant changes to their clients/members, albeit in a less targeted approach.