

13.3 Who is within the charge?

13.3.1 Overview

The question of who is liable to pay the charge depends on the type of vehicle used to hold the property. ATED is aimed at the following “non-natural persons”:

- companies (see **13.3.2**);
- partnerships with a corporate member (see **13.3.3**); and
- collective investment schemes (see **13.3.4**).

The non-natural person must be beneficially entitled to the property in question. Trustees and personal representatives are specifically excluded from the charge, so that a corporate trustee will not be liable. Furthermore, the beneficiary under a settlement is also outside the charge.

There is potentially an overlap between the three categories. For example, companies appear twice on this list and a partnership is also capable of being a collective investment scheme (see **13.3.5**). However, the legislation ensures that if ATED does apply, the relevant non-natural person is taxed under only one of the above categories. In particular:

- A company that owns the property in its own right is covered by the rules for companies.
- If the company holds the property through a partnership, the rules for partnerships apply (but see next point below). Similarly, where the company holds property through a collective investment scheme, the rules for collective investment schemes apply.
- It is possible for a partnership to be also a collective investment scheme. In these circumstances, the collective investment scheme rules apply.

But why does it matter which category the non-natural person belongs to? It matters because the correct classification is needed in order to identify the person or persons liable for the tax. It is a misconception to assume that liability falls solely on the non-natural person. As will be seen, for partnerships it is all the members who are liable, while for collective investment schemes, an investor is only liable if he has a substantial stake in the fund.

Law: FA 2013, s. 94(4)-(6), 95

13.3.2 Companies

Under this head, the property must be beneficially owned by a company otherwise than as a member of a partnership or collective investment scheme.

All companies are potentially within the charge, whether resident or non-resident, close or non-close. In practice, it is more likely that closely held companies – such as family or owner managed businesses – will fall within the charge. For example, the company may on occasion make the property available to family members for their private use; in these circumstances, an ATED liability could be triggered (see the example at **13.5.4**).

Liability for the tax falls on the company itself. By contrast:

- If the property is held through a partnership, liability is shared with the other partners.
- If the property is held through a collective investment scheme, the company may escape liability altogether due to nature of its interest in the fund (see **13.3.3** and **13.3.4**).

Law: FA 2013, s. 94(4), 96(2)(a), 97(2)

13.3.3 Partnerships with a corporate member

For these purposes, a partnership includes the following:

- a partnership under the *Partnership Act 1890*;
- a limited partnership under the *Limited Partnerships Act 1907*;
- a limited liability partnership under the *Limited Liability Partnerships Act 2000* or the *Limited Liability Partnerships Act (Northern Ireland) 2002*; and
- any partnership formed under the laws of a non-UK jurisdiction which has the equivalent characteristics of any of the partnerships listed above.

(See **2.5** for an explanation of the various types of partnership vehicle available in the UK).

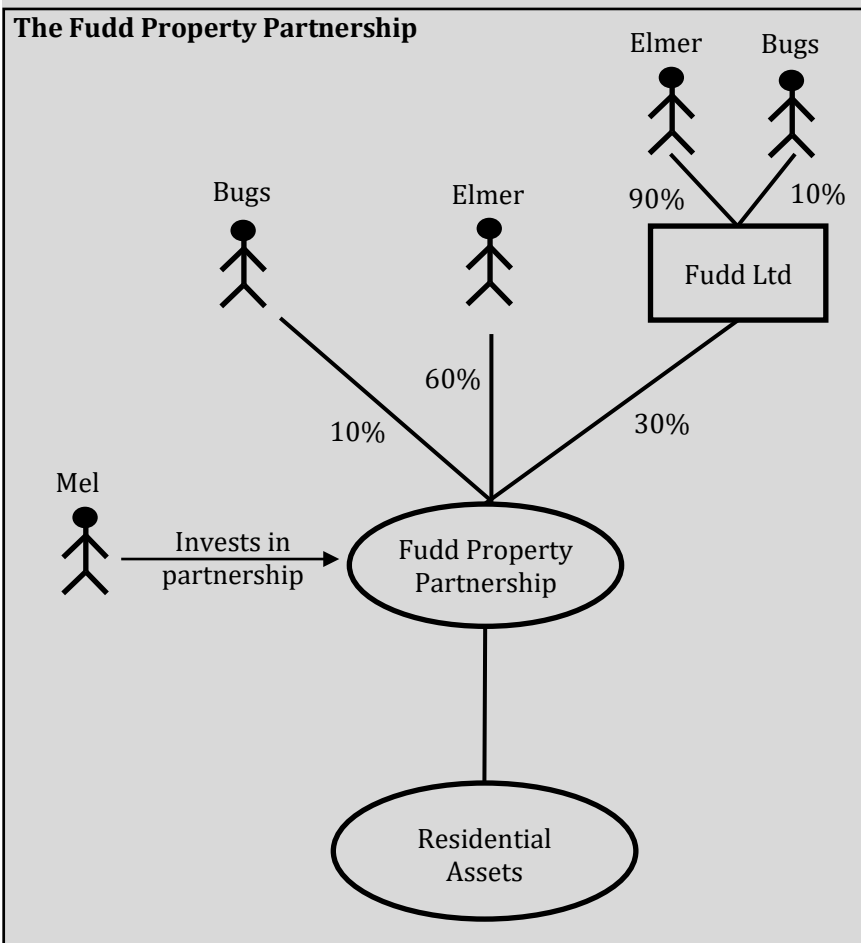
All the partners are liable to pay the tax, not just the corporate member. Accordingly, ATED can even apply to individuals. However, no double

taxation arises as only one amount of tax is levied with respect to each property subject to the charge (FA 2013, s. 104).

Furthermore, the tax only applies to a partner if he was a member of the partnership on the first day of the chargeable period to which the charge relates.

Example - new partner's liability to ATED

The Fudd Property Partnership invests in the buy-to-let sector. There are two individual partners, Elmer who holds 60% and Bugs who owns 10%. The third partner is Fudd Ltd, a company with a 30% stake. Elmer also holds 90% of Fudd Ltd while Bugs holds the other 10%.



The Fudd Property Partnership is potentially within the ATED regime, being a partnership with a corporate member. However, the annual charge should not apply due to the relief for property investors (see **13.5**).

On 1 April 2023, Elmer moves into one of the vacant properties after his own home suffers extensive damage in a fire. The value of this property is £800,000, above the ATED threshold of £500,000. Furthermore, Elmer is a non-qualifying individual because his stake in the partnership is greater than 50% (see **13.5.3**). As a consequence, the ATED relief no longer applies and all the partners are potentially subject to the annual charge.

On 1 June 2023, Mel joins the partnership, investing in a 5% share. Because he has joined partway through the relevant ATED year, he is not immediately liable for the annual charge. However, he will become liable if he remains a partner on 1 April 2024.

Liability for the tax is joint and several, irrespective of each partner's actual share of the partnership profits and gains. However, there is nothing to stop the partners from agreeing to allocate the liability between themselves in proportion to their respective economic interests in the partnership.

Note that different rules apply if a partnership also qualifies as a collective investment scheme (see **13.3.4** and **13.3.5**).

Law: FA 2013, s. 96(2)(b), (4), (5), 104

13.3.4 Collective investment schemes

A collective investment scheme is an arrangement whereby a group of persons pool their financial resources together to form a common fund, which is then invested on their behalf. The legal definition is found at s. 235 of the *Financial Services and Markets Act 2000* and is very broad. According to this definition a collective investment scheme consists of:

“any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.”

It is also a condition that the participants of the scheme – the investors – do not have day-to-day control over the management of the property in the fund.

Typical collective investment schemes in the UK include unit trusts and open-ended investment companies (OEICs) – these tend to be the most common fund vehicle used by retail investors, and are also known as authorised funds (see **2.6.3**). Overseas schemes include fund vehicles such as the Luxembourg SICAV.

The definition is wide enough to cover a company. However, under the *Collective Investment Schemes Order 2001* (SI 2001/1062), companies are excluded unless they are open-ended – these companies have a share capital which varies, depending on the level of demand from investors (see **2.6.3** for an explanation as to how shares are bought and sold).

Accordingly, the ATED rules for collective investment schemes do not apply to companies with a fixed share capital that invest directly and hold the property in their own right.

For collective investment schemes, primary responsibility for the tax falls on the person with day-to-day control over the management of the scheme property. This is subject to the following qualifications:

- for unit trusts, liability falls on the scheme trustees;
- for an OEIC, liability falls on the body corporate that beneficially owns the property, and on whose behalf the property is managed – this will normally be the OEIC itself; and
- for an EEA UCITS scheme, liability falls on the management company.

In addition, the following persons can be made liable, subject to certain limits:

- Investors holding a stake of at least 50% in the scheme (“major participants”) are jointly and severally liable with the person with primary responsibility, but their liability is limited to the market value of their investment.
- In the event that the tax is not paid, or not fully paid, it can be recovered from the scheme depositary, the person to whom the investments are entrusted for safekeeping. The depositary’s liability is limited to the value of property entrusted to it (including cash). The depositary has a right of

recovery against all the investors, not just the major participants.

As with partnerships, no double taxation arises as only one amount of tax is levied with respect to each property (FA 2013, s. 104).

Law: *Financial Services and Markets Act 2000*, s.235-237; FA 2013, s. 96(3), 98, 174(1); SI 2001/1062

13.3.5 Partnership that is also a collective investment scheme

The definition of a collective investment scheme is wide enough to cover partnerships. In particular, limited partnerships are potentially within the definition since the limited partners are required to take a passive role in the venture and therefore do not have day-to-day control over the partnership assets.

Accordingly, a partnership whose members consist solely of individuals is not automatically safe from the ATED regime – the regime can still apply if the partnership is regarded as a collective investment scheme.

A partnership with a corporate member is already potentially within the ATED rules. However, if it satisfies the definition, it is taxed as a collective investment scheme. The consequence is that liability for the charge shifts from all the partners to those partners with a 50% or greater stake and the person with day-to-day control – for a limited partnership, this will normally be the general partner.

Law: FA 2013, s. 167(4)

13.3.6 Property owned jointly with other persons

Where a company or partnership with a corporate member holds the property jointly with another person, the latter can also be liable for the ATED charge. Liability is joint and several, but the tax is levied only once to avoid double taxation. It is not necessary that the additional person should himself fall within any of the three categories of non-natural person – all that is needed is for the company or partnership to satisfy the relevant conditions. Thus, even an individual unrelated to the non-natural person could find himself liable for the tax.

Law: FA 2013, s. 97, 104