

tax lawflash

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Proposed UK Tax Measures on High-Value UK Residential Property

UK government introduces some clarity with respect to three UK tax measures applicable to UK residential property valued at more than £2 million that is acquired and owned by certain “non-natural” persons.

On 21 March 2012, the UK government announced a package consisting of three measures applicable to UK residential property valued at more than £2 million (high-value UK residential property) that is acquired and owned by certain “non-natural persons” (such as companies, partnerships, and collective investment schemes). The package is aimed at reducing the number of high-value UK residential properties owned indirectly through corporate structures.

One of these measures has already been enacted into the UK legislation. From 21 March 2012, stamp duty land tax (SDLT) at a rate of 15% applies to acquisitions of high-value UK residential property by certain non-natural persons and, from 22 March 2012, SDLT at a rate of 7% applies to acquisitions of such property by other purchasers.

Two other proposed measures, which are summarized below, were announced by the UK government in relation to high-value UK residential property last year but have not yet been implemented into the UK legislation. After a consultation process, on 11 December 2012, the UK government published its responses to the consultation¹ and draft legislation² in relation to some of these measures. The published draft legislation includes the introduction of the annual residential property tax (ARPT) and deals with certain other aspects of the proposed measures. In addition, the government’s responses to the consultation provide some guidance as to the approach that is expected to be taken in legislating with respect to certain other aspects of such measures. The draft legislation is still subject to change prior to the Royal Assent to Finance Bill 2013, which is expected in July 2013.

Current owners of high-value UK residential property held indirectly through non-natural persons and prospective sellers or purchasers of such property are recommended to consult their legal advisers with respect to the application of the proposed measures to their particular circumstances.

Summary of Proposed Measures Applicable to High-Value UK Residential Property

- Based on the recently published draft legislation, from 1 April 2013, the ARPT regime will apply to high-value UK residential property held by non-natural persons. For the period from 1 April 2013 to 31 March 2014, the ARPT will be £15,000 for property valued between £2 million and £5 million; £35,000 for property valued between £5 million and £10 million; £70,000 for property valued between £10 million and £20 million; and £140,000 for property valued at more than £20 million. The ARPT will be subject to increase. In situations where the property is subject to ARPT for only part of the year, ARPT will apply on a pro rata basis.

1. View the government’s summary of responses at http://www.hm-treasury.gov.uk/d/consult_response_ensuring_fair_taxation_of_residential_property_transactions.pdf.

2. View the draft legislation at <http://www.hmrc.gov.uk/budget-updates/march2012/finance-bill-2013-draft.htm#4a>.

- It has been announced that from 6 April 2013, the UK capital gains tax regime will be extended by the introduction of a new capital gains tax (CGT) charge that will apply to gains resulting from the disposal of high-value UK residential property by non-UK resident non-natural persons. Draft legislation implementing this measure is expected to be published in early 2013.

Important Issues of Interpretation in Relation to the Proposed Measures

Reliefs for Genuine Businesses

Draft legislation implementing the ARPT contains a series of provisions for reliefs for genuine businesses carrying out genuine commercial activity. In order to benefit from such reliefs, businesses must make claims annually in the prescribed manner and changes must be similarly reported.

The scope of reliefs for genuine commercial activity has been expanded from what was originally announced. Provided certain conditions have been satisfied, reliefs are now available to property development, rental, and trading businesses, as well as in relation to property occupied by qualifying employees. While the extended scope of reliefs presents a welcome approach to the introduction of the ARPT regime, the interchangeable use of such terms as “business” and “trade” in the draft legislation may present difficulties when determining the availability of reliefs in borderline cases, including from the perspective of non-UK residents.

Mirroring reliefs have been included in the draft legislation under the SDLT regime, which will have the effect of reducing the high 15% SDLT rate to 7%. It is expected that similar reliefs will be incorporated into the CGT regime as it will apply to non-residents.

Non-residents should be aware that, even if reliefs from the CGT charge are available, any proceeds from the disposal of a property may still be subject to UK income or corporation tax if realised as part of certain trading activities carried on in the UK.

Clarity in the Definition of a “Non-Natural Person”

Draft legislation on the ARPT brings the definition of a “non-natural person” in line with the definition used for the purposes of the higher SDLT charge that is already in force. For purposes of the SDLT and ARPT regimes, non-natural persons include companies, collective investment schemes (including collective investment schemes organised as unit trusts), and partnerships that have companies as their members. Non-natural persons do not include, for example, trustees (with the exception of trustees of collective investment schemes).

The UK government has indicated in its response to the consultation that, broadly, the same meaning of “non-natural person” will be applied for purposes of the CGT regime in order to make the use of this term more consistent across all measures. It was also indicated that the new CGT charge will apply to non-resident companies, non-natural persons who are members of partnerships, and collective investment vehicles that own and dispose of high-value UK residential property. It is expected that there will be some exceptions in the treatment of certain entities, such as partnerships. However, it is intended that the new charge will not apply to disposals by trustees (other than trustees of collective investment schemes). The final scope of the definition is not yet known but is expected to be set out in the government’s guidance in early 2013.

Although UK inheritance tax issues will still need to be addressed, the broad exclusion of trusts and trustees (other than as described above) from the definition of “non-natural persons” allows for the continued use of trusts in structuring ownership in appropriate cases.

Specific Issues in Relation to the CGT on Non-Residents

Tapering Relief

The rate of the CGT charge as it will apply to non-residents on disposals of high-value UK residential property is expected to be 28%, with a tapering relief for gains where the property is worth slightly more than £2 million.

Gain Accrued on or After 6 April 2013

If the reliefs for genuine businesses described above do not apply, the CGT regime will provide for “rebasings” of the value of the property for purposes of the CGT charge as it will apply to non-residents. This effectively means that the charge will apply on the disposal of a property by a non-UK resident non-natural person only to the portion of the gain accrued on or after 6 April 2013.

Direct Disposals Only

When originally announced, the CGT charge was to apply to direct and indirect disposals by non-residents of high-value UK residential property. Following the consultation, the new charge will only apply to disposals of residential property, and interests in residential property, directly held by non-UK resident non-natural persons and therefore will not apply to indirect disposals (for example, a disposal of shares in a company solely holding high-value UK residential property).

Possible Application to UK Resident Non-Natural Persons

Although the CGT charge potentially applies only to disposals by non-UK resident non-natural persons, the UK government is considering extending this charge and the genuine business reliefs to UK resident non-natural persons. The UK government is currently reviewing this proposal and its interaction with the UK corporation tax (which applies to, for example, capital gains realised by UK companies) and expects to announce a decision in early 2013.

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