

## OWNERSHIP OF HIGH VALUE UK RESIDENTIAL PROPERTY – IMPORTANT TAX CHANGES

In his budget speech on 21 March 2012 the Chancellor announced a number of changes that affect purchasers and owners of high value residential property in the UK. The first set of changes came into effect on 21 March 2012 and imposed a higher rate of SDLT (15%) on purchases by non-natural persons of high value UK residential property. The other changes will apply from April 2013 and have been the subject of a consultation exercise issued by the Treasury in May 2012. These changes will comprise:

- An annual charge on high value residential property owned by non-natural persons;
- A charge to Capital Gains Tax (CGT) on the disposal of such property.

For all these purposes “high value residential property” is defined as residential property valued in excess of £2 million. A “non natural person” is defined as a company, a partnership with a corporate member or a collective investment scheme.

### The 15% SDLT Charge

As it stands this charge arises where a high value residential property is purchased by a non-natural person irrespective of whether that person is resident in the UK or overseas and generally irrespective of whether the property is purchased for a commercial purpose (for example, as a “buy to let”) or for personal occupation by the owner of the purchasing company or his family. There is an exemption for bona-fide property developers, but this exemption is subject to significant restrictions and may not assist in many situations.

The good news is that a number of additional exemptions are to be introduced to cover property acquired to let to a third party, for re-development, for re-sale in the property trading business, as a farm house to be occupied by qualified farm worker or by a charity. These exemptions are subject to a claw back if the relevant conditions are not met for a period of 3 years following the acquisition of the property.

It is proposed that, in relation to SDLT, these new exemptions will take effect from Royal Assent of the Finance Act 2013 which is expected to take place in mid-July of this year. Any non-natural commercial purchaser of high value residential property should therefore consider whether it is possible to delay the tax point for the transaction until after Royal Assent.

## Changes Proposed for April 2013

### *Annual Residential Property Tax (ARPT)*

This charge will apply to high value residential property which is owned by a non-natural person at any point during a calendar year commencing on 1 April. (The first chargeable period commences on 1 April 2013). For a property which is within the scope of the charge throughout the year the ARPT payable is set out in the following table.

Value	ARPT (per annum)
£2 million - £5 million	£15,000
£5 million - £10 million	£35,000
£10 million - £20 million	£70,000
£20 million +	£140,000

The charge is reduced pro-rata where the property is not owned throughout the year.

Whenever ARPT applies it will be necessary to submit an ARPT return annually. For the year 2013/14 the return will be due by 1 October 2013. For years 2014/15 onwards the return will be due by 30 April following the end of the tax year in question. Where a property becomes subject to the ARPT charge part way through a year the return must be delivered within 30 days of the first day on which the person comes within the charge with respect to the property, but that period is extended to 90 days if the interest arises in a new or converted dwelling.

For the purposes of ARPT it will only be necessary to value a property every 5 years and HMRC intend to introduce a clearance system to apply where it is thought the value of a property is close to one of the bands (i.e. £2 million, £5 million, £10 million and £20 million) so that the appropriate rate of ARPT can be agreed with HMRC before submitting an ARPT return.

### *Capital Gains Tax (CGT)*

There is to be a charge to CGT for both UK and non UK resident non-natural persons who dispose of interests in high value residential property that are the subject of ARPT. Companies that are within the charge to UK corporation tax will become liable to this new CGT charge rather than corporation tax. The charge will apply to disposals which take place on or after 6 April 2013.

The rate of CGT will be 28% (mirroring the rate for individual higher rate tax payers) and there will be an ability to elect to rebase at 6 April 2013 so that the charge will apply only to increases in value for or after that date. Furthermore, a form of tapering relief may apply where a property is sold for

proceeds which are just over the £2 million threshold. The purpose of this is to avoid the situation where a person may be better off if he reduces the selling price for a property to just under £2m. Originally the Government were considering extending this Capital Gains Tax charge to disposals of companies which owned high value UK residential properties. However, they have now confirmed that this proposal will not proceed.

### **Comment**

Following the new exemptions and reliefs announced, this package of changes is more closely focused on the use of corporate vehicles to own high value property which is intended for the personal occupation by the underlying owner of the corporate vehicle or by persons connected within (for example, his family). Properties acquired for bone-fide commercial purposes will not generally be caught. However, the legislation is complex and would appear to contain a number of possible traps. For example, where separate interests in the same residential property (for example, a leasehold and the freehold reversion) are owned by a non-natural person and another connected person (whether or not non-natural) that non-natural person is deemed to own the entire property for ARPT purposes. Thus, for example, where an individual owns a long lease over a property and a company with which he is connected buys or owns the freehold reversion (which might have a purely nominal value) that company would be liable to SDLT at 15% and/or ARPT on the full value of the combined interests.

In the main it is likely that those affected by these changes will be non UK domiciled individuals who, for reasons of confidentiality or to mitigate UK inheritance tax, choose to own their homes through corporate structures. In such cases the individual will need to decide whether to bear the ARPT and CGT or to restructure his affairs so as to escape liability. In appropriate cases a possible course of action would be to liquidate the property holding company and hold the property through a trust structure. UK inheritance tax will remain an issue, but it is generally possible to mitigate IHT using debt arrangements to reduce the taxable value of the property.