Ownership of UK Residential Property by Non Residents

Non-domiciled individuals (**non-doms**) and offshore trustees will have been watching this Budget particularly carefully as it had already been announced prior to its delivery on 21 March 2012 that the Chancellor would be taking action in relation to individuals who acquire UK property through offshore companies. The form and extent of the proposals have been more wide ranging than many had anticipated and in the coming months non-doms, trustees and anyone who owns or might buy high value property will need to be alert to how they unfold.

In order to tackle what the Government calls the 'enveloping' of high value properties into companies to 'avoid paying a fair share of tax', three measures are to be introduced:

- a new 15% rate of stamp duty land tax (**SDLT**) to purchases of UK residential properties worth over £2million by '*non-natural persons'*
- an annual charge on UK residential properties valued at over £2million owned by such persons
- an extension of the capital gains tax (**CGT**) regime to gains on the disposal of UK residential property and shares or interests in such property by non-natural persons who are non-resident

The 15% rate applies from Budget Day but the annual charge and the changes to the CGT regime will be the subject of consultation over the summer and the intention is that they will commence in April 2013.

These proposals assume that tax avoidance is a key motive, but many non-UK residents purchasing property in the UK for their own occupation when visiting this country may look to structure their ownership through a company or trust structure for a number of different reasons: privacy and inheritance tax planning are often extremely important. At the higher end of the property market, paying 15% (as opposed to the new top rate of 7% SDLT) when purchasing a property may simply be reluctantly accepted as the price to be paid for privacy or protection against IHT liabilities, and property prices could no doubt start to reflect that, but around the £2million mark purchasers are unlikely to be willing to factor that in. If paying the 15% SDLT charge might mean that owners are not then faced with the annual charge or future CGT costs that might be a different matter, but as yet we have not been told exactly how these charges will interact.

The terminology used in the Treasury publications to date is loose and we will need to see the more detailed proposals in the consultation documents before advising those who already own UK property through a corporate or trust structure. 'Non-natural person' includes companies, collective investment schemes and partnerships in which a non-natural person is a partner. There are to be exclusions for corporate trustees 'in certain circumstances', and the Revenue have now advised (in relation to the 15% charge) that this will cover simple trust structures where one or more of the trustees is a company. As regards the annual charge and the additional CGT charge, the implication is that these will only apply where the non-natural person is non-UK resident.

Annual charge

The Budget 2012 policy costings state that the levels of the annual charge will be set at £15,000 pa for properties valued at between £2 and £5 million; £35,000 for properties valued at between £5 and £10 million; £70,000 for properties valued at between £10 and 20 million; rising to £140,000 for properties worth more than £20 million. Introducing an annual charge on capital values means that the UK now has its first form of wealth tax (a form of tax found in many European jurisdictions including France and Spain).

There is scant detail on the proposal at this stage and it will be interesting to see how the consultation document will address the multitude of practical issues that will arise when implementing such changes. Valuation issues will be key for properties already in such structures. Will the rate be fixed at the time the property was acquired or will annual or at least regular valuations be required? Will residential property be caught by the provisions if it is in fact held as a commercial investment, being rented out on arm's length terms?

New CGT charge

Although the property market has seen prices fall or remain static in recent years, properties at the higher end of the market have seen large increases and owners could be sitting on substantial gains. We await the detailed proposals to see if increases in value prior to the introduction of this new CGT charge will be caught or only future increases in value.

Action now?

Until more information is available any action would be speculative. Once the consultation documents are available we will be studying the proposals in detail and can consider what, if any, action those who own UK residential property might want to consider taking in relation to existing structures in advance of the CGT and annual charge coming into effect next year.

If you have any questions or would like further advice then please do not hesitate to contact Steve Dumper on 01363 775365.