Non-Residents Investing in UK Property - Latest Developments

Trust and Estate Planning Practice Group

Cancun – October 2013

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CHARTERED ACCOUNTANTS

Background

1. **London Properties**
2. **Income tax**
3. **Stamp duty land tax**
4. **Inheritance tax**
5. **Capital gains tax**

Background

1. London Properties

In certain parts of Central London more than 50% of properties are owned by non-UK companies, often with a trust above.

Investment comes from Greece, Middle East, France, Hong Kong, China, Russia, etc.

Background

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2. **Income tax**
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Background

2. Income tax

a) Rental income is liable to income tax irrespective of the residence of the owner. For an individual, the income tax rate could be as high as 45%.

b) The Non Resident Landlord Scheme means the tenant and/or agent need to deduct 20% income tax from payments made to a non-UK resident landlord.

c) The landlord can apply to receive rent gross. However, this is not an exemption.

d) Interest is an allowable deduction but there are rules on the maximum relief available.

Background

1. London Properties
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Background

3. Stamp duty land tax

a) Levied on the purchase of UK property and the rate varied between bands from 0% to 5% (pre March 2012).

b) The percentage is applied to the whole of the consideration, for example £1,000,001 is charged at 5% and £1,000,000 is charged at 4%.

c) The maximum rate for non-residential property is 4%.

Background

1. London Properties
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Background

4. Inheritance tax

a) Inheritance tax is levied on UK real estate irrespective of residence and domicile of owner.

b) First £325,000 charged at 0%; balance charged at 40%.

c) Double taxation treaties and foreign tax credits not normally of any benefit in eliminating the inheritance tax liability.

d) Example - Mr X, non-UK resident and non-dom owns a UK property worth £2m and then dies:

	£
Property	2,000,000
Nil rate band	(325,000)
Taxable	£1,675,000
Tax rate 40%	£670,000

Background

1. London Properties

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5. **Capital gains tax**

Background

5. Capital gains tax

a) In general, long term non-residents are not liable to capital gains tax on the disposal of UK situs assets.

b) However the UK property must be an investment. If deemed to be trading or dealing, the gain may be taxed as income.

Solution

Use of a non-UK company

Traditionally UK residents acquired UK property using a non-UK resident company, often with a trust above, for the following reasons:

a) For income tax, the maximum rate is 20%. The company can use loans to reduce the income tax payable.

b) For stamp duty land tax, can transfer the shares rather than the property with no stamp duty land tax payable.

c) For inheritance tax, now own a non-UK situs asset: i.e. the shares and hence no exposure to inheritance tax.

d) For capital gains tax, no tax on the capital gain on sale of the property.

Latest Developments

1. **Income tax**

2. **Stamp duty land tax**

3. **Annual tax on enveloped dwellings**

4. **Inheritance tax**

Latest Developments

1. Income tax

There have been no changes to income tax.

Latest Developments

1. Income tax
2. **Stamp duty land tax**
3. Annual tax on enveloped dwellings
4. Inheritance tax

Latest Developments

2. Stamp duty land tax

a) 7% rate introduced from 22 March 2012 on residential transactions over £2 million (up from 5%).

b) From 21 March 2012, the rate is 15% for a dwelling purchased for more than £2 million by a company, a partnership which includes a company or a collective investment scheme:

   i. Exemption for property development companies of 2 years standing.
   ii. From 17 July 2013, exemptions increased (as per ATED exemptions – see later).

c) But still no stamp duty land tax on the transfer of a company.

d) The maximum rate for non-residential property remains at 4%.

Latest Developments

1. Income tax
2. Stamp duty land tax
3. **Annual tax on enveloped dwellings**
4. Inheritance tax

Latest Developments

3. Annual tax on enveloped dwellings (ATED)

a) Commencing 1 April 2013, ATED applies to dwellings valued at more than £2 million owned by a company, a partnership which includes a company or a collective investment scheme. Includes UK vehicles. It does not apply to a UK property owned by a trust directly.

b) Main exemptions:

   i. Property development business (not limited to those of 2 years standing).
   ii. Property rental business.
   iii. Property dealing business.

c) Exemptions require no occupation by a connected person.

d) ATED does not apply to non-residential properties.

Latest Developments

3. ATED *(continued)*

Property Value	Annual Charge
£2 million to £5 million	£15,000
£5 million to £10 million	£35,000
£10 million to £20 million	£70,000
Greater than £20 million	£140,000

a) Self-appraisal of value!

b) Value is as at 1 April 2012 or when acquired, if later. Same value applies until 2018-19 when 1 April 2017 value applies.

c) HMRC banding check service available if within 10% of a threshold.

d) Nil returns required even if exemption applies for whole period.

e) Filing date – first deadline, 1 October 2013 for the year ending 31 March 2014 and then 30 April 2014 for the year ending 31 March 2015 and 30 April thereafter.

f) Payment date – first deadline, 31 October 2013, then every 30 April thereafter.

Latest Developments

3. ATED *(continued)*

Capital Gains

a) Rebasing to 5 April 2013 to calculate ATED–related gain.

b) Split post 5 April 2013 gain into part that is ATED–related (accrues during days when ATED annual charge applies) and the part that is not (accrues during days when an exemption applies).

c) Capital Gains Tax rate on the gain is 28% on ATED part.

d) Part that is not ATED related and any pre 5 April 2013 gain accruing may be chargeable to UK tax, e.g. if owned by UK resident company.

Latest Developments

1. Income tax

2. Stamp duty land tax

3. Annual tax on enveloped dwellings

4. **Inheritance tax**

Latest Developments

4. Inheritance tax

a) Previously could obtain a deduction for inheritance tax by securing a loan on the UK property.

b) From 17 July 2013, the loan is not deductible to the extent the liability is attributable to the acquisition of 'excluded property', e.g. take a loan secured on the property and use the proceeds to acquire a foreign asset.

Planning Points

a) ATED applies to £2 million+ residential properties only.

b) Traditional planning still applies for lower valued or commercial properties, i.e. use of offshore Company.

c) To avoid ATED consider holding personally (may involve de-enveloping).

d) ATED may be better than inheritance tax exposure.

e) In short term ATED is better than stamp duty land tax cost when buying direct – 10 years to recoup (if already held by overseas company) but leaves exposure to capital gains tax.

<u>If UK property is not held through an offshore company</u>

a) Reduce inheritance tax by loan secured on and directly used to purchase the UK property, but stamp duty land tax charge applies.

b) Use life assurance to pay inheritance tax – annual premium may be lower than ATED.

c) Inheritance tax deferral to second death using inter-spouse exemption.

   i. Applies to civil partners.

   ii. Potential restriction if first to die is UK domiciled and passes to non-dom.

d) Complications unwinding where the company is owned by a trust, e.g. inheritance tax issues and other UK anti-avoidance rules where property becomes owned directly by a trust.