

International Taxation Practice Group (ITPG)

UK Budget Changes Affecting UK Property

By David J Kidd

"I will do such things, what they are, yet I know not, but they shall be the terrors of the earth" – Shakespeare, King Lear, Act II, Sc IV

London as favoured location?

There was a recent report that London and New York are still the favoured places for the world's wealthy to buy houses, but competition is growing from Beijing and Dubai. Quality of life and economic activity were, according to the report, among key factors for the wealthy in choosing where to invest. London came top of the list in most factors and was still expected to be top of the list in a decade's time. This report was prepared prior to the UK Budget on 21st March 2012 when adverse tax measures, uncertain in detailed scope, were announced; and it remains to be seen whether London can continue to be a favoured place. This article covers the main changes.



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Capital gains tax on residential property held by non-resident non-natural persons

The government announced that it will be consulting on the introduction of a capital gains tax charge on UK

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residential property owned by non-resident non-natural persons with a view to introducing specific legislation in Finance Act 2013. Non-natural appears to mean any legal entity other than a flesh-and-blood individual, for example any corporate body. This represents a significant change from the current position, which exempts non-residents from capital gains tax. Anti-avoidance legislation already exists so that a capital gain made by a non-resident company owned by a resident individual would be, in most circumstances, taxed on the resident individual. Where there is no such resident, a non-resident company owned by a non-resident individual is currently in the same position as the non-resident individual himself – neither being subject to capital gains tax. If the Budget change goes ahead, the company will be subject to capital gains tax, but the individual – being a natural person – will remain exempt. There is no present indication that there will be transitional provisions, or apportionment of gains now brought into charge.

Long period of uncertainty

The legislation giving effect to the new capital gains tax charge will not be in place until about July 2013. During the lengthy time until then consultation will take place, and presently unknown changes may well be made. The proposed change is unlikely, however, to be completely withdrawn. The policy itself

is closely linked with consultation concerning an annual charge on residential properties valued at more than £2 million held by non-natural persons (see below); and this in turn is linked with the objective of preventing future stamp duty land tax (SDLT) avoidance. Making offshore companies unattractive for the holding of UK residential property owing to capital gains tax appears to be part of the move against SDLT avoidance to which the government attaches importance. It is worth noting in passing, however, that the use of companies is often for protection against inheritance tax and where this is the case, alternative inheritance tax protection will need to be considered.

More on the proposed capital gains tax on non-natural persons

The proposed capital gains tax remains, however, a distinct tax in its own right. The change appears not to be restricted to properties worth more than £2m (as occurred with the SDLT changes mentioned below). One cannot assume that the small-scale investor, or one whose properties have fallen in value below £2m, will not be affected. This remains to be seen.

The measure is stated to apply to disposals of 'shares or interests' in residential property. A casual reader might suppose this means shareholdings might be covered, but in context a reference to joint ownership structures or

partnership interests is almost certainly intended i.e. shares in property. An option held by an offshore company may well also be an ‘interest’ in residential property. On these matters, there is a current lack of clarity.

Ownership by a non-natural person will also require clarification: both “ownership” and “non-natural” are difficult to apply to some complex structures and circumstances. Does the phrase include individual nominees or trustees who hold on behalf of another or others? Is a discretionary trust a “natural person”? When is an entity – for example: LLC, Stiftung, Anstalt – transparent for UK tax purposes so that one can look through to the underlying individuals. Where any of these entities are involved in UK property ownership, is there going to be “ownership” by a “non-natural” person? This remains to be worked out.

Annual charge for high value residential properties

The government is also going to consult on the introduction of an annual charge on residential properties over £2 million owned by certain non-natural persons. Legislation will finally come into force sometime in July 2013, but take effect from April 2013. The government announcement refers to an “enveloping annual charge”. The term ‘enveloping’ is normally used to describe putting property into a company purely for tax reasons but it is not con-

sidered this word has any practical limitation here. Residential property already in offshore companies or transferred to such companies for purely commercial or non-tax reasons will, it seems, be affected by the charge.

The expected level of the annual charge is in the following order of magnitude:

Property value	Annual charge
£2m – £5m	£15,000
£5m – £10m	£35,000
£10m – £20m	£70,000
£20m +	£140,000

Immediate SDLT changes

A new 7% rate of SDLT for purchases of residential property worth more than £2m was introduced with immediate effect from 22nd March 2012. It is applicable to residential property only, and applies whoever the purchaser is, natural or non-natural. The previous highest rate was 5%.

Separately a new 15% rate of SDLT for residential property transactions worth more than £2m has been introduced with immediate effect from 21st March 2012. To apply the purchase must be undertaken by certain persons - broadly companies, collective investment schemes, and partnerships with a corporate member. There are two exclusions from the charge, corporate trustees and established bona fide property development companies. ...next page

Both these measures were imposed without warning or consultation. The 15% rate is widely regarded as a penal rate to deter the transfer of residential property into companies. Once a property is in a company the shareholdings in the companies can subsequently be transferred with a maximum transfer duty of 0.5%.

The principal UK Treasury Minister re-affirmed the hardness of government policy in this area by issuing a warning that he would not hesitate to move swiftly, without notice and with retrospec-

tive legal effect if “inappropriate” ways round the new measures were found.

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