
# *Festive package for the high-value residential market?*

In June this year we circulated a briefing: *A Mansion tax by the back door?* in which we considered the Government's new 15% rate of SDLT on the purchase of residential property worth over £2 million by non-resident "non natural persons" ("NNPs") i.e. companies, corporate entities, trustees (other than bare trustees) and collective investment schemes, personal representatives, clubs, associations and other bodies governed by overseas laws.

We also flagged two further proposals:

- an annual residential property tax ("ARPT") banded according to the value of the property; and
- a CGT charge to gains made by overseas NNPs on the sale of residential property in the UK worth over £2 million.

The Government launched a consultation, the response document for which was published last week, fleshing out some of the details of these proposals. We now have draft legislation implementing ARPT, although the equivalent for the new CGT charge will not be published until January.

- **ARPT:** This tax will come into effect on 1 April 2013. Returns and payment will usually be due on 30 April but for the first year returns will be due on 1 October 2013 and payment by 31 October 2013. The amount of tax payable will depend upon which of the fixed bands the dwelling is within. These are as follows:

  - £15,000 for properties valued between £2m and £5m
  - £35,000 for properties valued between £5m and £10m;
  - £70,000 for properties valued between £10m and £20m;
  - £140,000 for properties valued at over £20m.

  Liability to ARPT will be pro-rated when a property is sold part-way through a tax year. Properties must be revalued for ARPT purposes every five years after acquisition.

  The draft legislation implementing ARPT provides that the thresholds between the bands will increase in line with consumer price inflation every year. Whilst any provision for increases is welcome, the choice of CPI as the basis means that if past inflationary trends continue, more and more properties will fall within the scope of the tax as time passes.

  ARPT has been added to the list of taxes which will be subject to the General Anti-Abuse Rule which is being introduced in the summer, so any attempts at planning to mitigate it will need to be approached with caution.

- **CGT Charge:** the new tax charge will be payable by NNPs on gains accruing on or after 6 April 2013 if they were liable to the new ARPT on the property in question. This is a significant softening of the original proposal, which would have taxed the whole of any gain on a post-6 April disposal whenever it accrued, and which therefore contained a material element of retrospectivity. In practice this will mean that those considering unwinding existing structures will no longer suffer a penal fiscal penalty if they fail to do this before 6 April.

  The rate of CGT is expected to be 28 per cent on all gains on disposals of high value residential property over £2 million by affected NNPs with marginal relief for gains close to the £2 million threshold. The Government tells us that tapering relief will reduce the CGT liability to ensure sellers will be in a better financial position than if they had sold for just under £2 million. It is not obvious how the Government could conclude that it is consistent with EU law to charge an EU resident company tax at 28% on a gain which, if realised by a UK company, would be taxed at a materially lower rate, and indeed the question of whether to extend the new CGT regime to UK companies within the scope of ARPT is one of the points put out for further consultation by the government.

## The good news: exemptions

- There are to be extensive exemptions from these provisions for cases where property is held for genuine commercial operations. Whilst the only exemption in the original proposals was for property developers with a two year track record, now all property developers will escape the charges, along with other businesses using properties in the course of a trade, and entities letting properties. This is very good news for all those looking to invest in the high end UK residential market, as long as they do not also want to live in their investments.
- The benefit of these exemptions is lost if individuals with a significant ownership connection with the entities holding the properties live in them, despite the wider commercial use. We suspect this circumstance will be very unlikely in practice.
- The exemptions will apply to all three of the penal measures: the 15% SDLT charge for NNPs, the ARPT and the CGT charge on sale. The 15% SDLT charge on acquisition will be reduced to the normal rate where there is relief against the ARPT. However, if the conditions of the exclusions are met on acquisition but cease to be met within three years, the relief from the 15% SDLT charge is clawed back so the full amount must then be paid.
- As previously announced, the annual charge and the CGT charge will come into effect in April 2013. However, regrettably, the exemptions from the 15% SDLT charge (which has been in place with effect from March this year) will not take effect until the Royal Assent of next year's Finance Bill which is likely to be in the last week of July.

The changes to the measures seem to have successfully addressed the concerns of the commercial property investment and development industry. It is hard to see now that the activities of this sector should fall within the penal regime, which reflects the Government's stated policy behind the measures. However, in contrast, but also consistent with the policy, individuals living in houses owned through corporate vehicles will remain fully subject to the charges. This is unlikely to change in the near future.

*"Happily, after a well managed and extensive consultation, there are a number of sensibly targeted reliefs for entities acquiring property for legitimate commercial exploitation, but funds waiting to invest in high value residential property will have to wait a little longer: presumably due to constitutional constraints, the 15% SDLT rate will not disappear for them until the Royal Assent"*

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