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Alert

Real Estate

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Tax Changes Affecting Owners of UK Residential Property

Summary In April this year the Government is introducing new taxes on UK residential property with a value of £2 million or more (**high value residential property**) that are owned indirectly through corporate and certain other structures. This follows on from the introduction last year of a 15 per cent SDLT charge on the purchase of high value residential property owned by such entities. With effect from 1 April, there will be an additional annual SDLT charge on high value residential property owned by: a company, a partnership with one or more corporate partners, or a collective investment scheme (such as a unit trust) (**non-natural persons**). The charge applies whether the entity is UK or offshore. The level of charge depends on the value of the property and ranges from £15,000 to £140,000. With effect from 6 April, non-natural persons which are offshore will also be subject to capital gains tax on the sale of high value residential property at the rate of 28 per cent.

The annual SDLT charge will significantly increase the costs of holding UK residential property in non-natural structures. The sale of the property held under an offshore structure may also be caught by the new capital gains tax charge, although depending on the precise circumstances, it may be possible to arrange the sale in a way which avoids the new charge. More positively, it will still be possible to sell shares in an overseas company that owns high value property without any SDLT or stamp duty charges.

If you currently own high value residential property indirectly through a non-natural person, you may want to consider the possibility of un-winding your existing structure and putting in place a new structure before 1 April. Whether this is advisable and feasible will require careful consideration of all of your particular circumstances.

If you are considering buying high value residential property, careful consideration will need to be given to the best structure for making the purchase.

Key features Please note that the information set out in this note is based on the latest available draft legislation and published announcements of HMRC. The precise scope and terms of the new charges remain subject to change at any time before the new rules are enacted (which is expected to be in July).

The annual SDLT charge

- The annual charge will apply to all high value residential property interests held by a non-natural persons, whether in the UK or offshore, with the level of the charge depending on the value of the interest:

Value of Property	SDLT Payable
£2 million - £5 million	£15,000
£5 million - £10 million	£35,000
£10 million - £20 million	£70,000
More than £20 million	£140,000

- The level of the charge will be subject to annual adjustment by reference to the Consumer Price Index but the band levels will not be indexed.
- The charge extends to land where work has begun on the construction of or adaptation of a building for residential use. It also extends to any land enjoyed or occupied with a dwelling such as a garden or grounds and any out- buildings. Residential accommodation for school children and students, care homes for children and the elderly, hospitals and hotels (and a range of buildings in similar uses) are not within the charge.
- The annual charge will not apply where the property owner is a trustee (other than a bare trustee/nominee) or a charity or the property is held for the use of employees.
- The charge will also not apply, broadly, where the property is used for bona fide business purposes such as a property trading, development or rental business provided that the property is not occupied by the owner or certain persons connected with the owner.
- The charge will be set for five years from 1 April 2013 by reference to the market value of the property interest held on 1 April 2012. The charge for the next five years, from 1 April 2018, will be set by reference to the value on 1 April 2017 and so on.
- Property owners will have to self-assess the charge and the market value on which it is based. The first return will have to be made by 1 October 2013 (with payment by 31 October 2013), but that is for the first year only and after that by 30 April of each year.
- The Government is introducing a free pre-return banding check service for those who estimate that their value is within 10 per cent of a band limit. This is expected to start in June 2013. In addition, property owners will be

able to submit their proposed valuation to HMRC in advance for checking and agreement with HMRC.

- HMRC will not usually seek penalties where a taxpayer has obtained a valuation from a suitably qualified professional valuer, if it is established later that the property has been undervalued.

Capital gains tax

- Non-UK resident non-natural persons that own high value residential property will be subject to capital gains tax on the sale of the property.
- The rate of tax will be 28 per cent but with tapering relief where the property is worth just over £2 million.
- Residential property has the same meaning as for the annual SDLT charge.
- The charge will not apply to the sale of shares and securities of the relevant non-UK resident entities (contrary to what was originally proposed).
- The charge will not apply to non UK resident individuals who sell residential property. (Under the existing rules UK tax resident individuals are, in any event, within the UK capital gains tax net.)
- There will be similar exemptions as apply to the annual SDLT charge so that trustees, charities and certain bona fide businesses will not be subject to the charge.
- The Government is still considering whether to extend the charge to UK tax resident companies. UK resident companies are currently subject to corporation tax on any gain but this is at a lower rate of 23 per cent.
- The taxable gain will be computed as under the general capital gains tax rules, broadly, as the difference between the amount originally paid for the property and the sales proceeds. However, companies will not obtain the benefit of indexation (an allowance for inflation) to reduce the gain. Principal private residence relief will not apply.
- The charge will apply to all relevant sales taking place on or after 6 April 2013 by reference only to the gain accruing after that date. This is a significant change from the original proposal to tax the entire gain accruing over the whole period of ownership including periods before 6 April 2013.

Changes to the 15 per cent SDLT charge

- The exclusions from the 15 per cent charge are to be extended in line with the exclusions for the annual SDLT charge and the new capital gains tax charge. This means that the exclusion from this charge will also extend to bona fide property trading, development and letting businesses.