CGT on residential properties owned by non-UK residents

During the 2013 Autumn Statement, the Chancellor announced that Capital Gains Tax (‘CGT’) would be extended to non-UK residents selling UK residential property.

Whilst the Chancellor proclaimed that “Britain is an open country that welcomes investment in our residential property”, he observed that there is currently an imbalance between how UK residents and non-UK residents are assessed to CGT when disposing of UK residential property. Seeking to redress this he announced that from April 2015, UK residents and non-UK residents realizing capital gains on UK residential property will be subject to UK CGT in the same way.

On 28 March 2014, the Government published the long awaited consultation document on extending CGT to non-UK residents and what follows is a summary of that consultation document.

Extending CGT to non-UK residents selling UK residential property

Non-UK residents selling UK residential property will be subject to CGT from April 2015 but ‘only to capital gains arising from that date’ which suggests that the base cost of properties for CGT purposes will be ‘uplifted’ at that date.

Individuals, trusts, companies and non-UK resident partners of partnerships owning UK residential properties will be subject to the CGT. However, certain qualifying funds will not be within the charge, such as foreign equivalent Real Estate Investment Trusts.

The rate of CGT will be either 18% or 28% for individuals, depending on the level of their total UK income and capital gains. It is intended for the capital gains annual exempt amount (currently £11,000) to also be available to individuals. The rate of tax applying to other entities, such as companies, was not confirmed in the consultation document.

The new CGT will apply to a property ‘used or suitable for use as a dwelling i.e. a place that currently is, or has the potential to be, used as a residence’. The Government has confirmed in the consultation document that residential property that is primarily for communal use, such as boarding schools and nursing homes will not be affected by the new CGT, but residential accommodation for students will come within the new tax, except where the property is part of a hall of residence attached to an educational institution. This is a different stance to how the Annual Tax on Enveloped Dwellings (‘ATED’) applies to student accommodation.

The consultation document confirms that Principal Private Residence (‘PPR’) relief should be available to non-UK resident individuals, but the Government considers it will only apply in limited circumstances as a non-UK resident individual’s main residence is expected to be outside the UK. With this, the consultation document proposes replacing the current PPR election rules with a qualitative measure, which will affect UK resident individuals as well.

The difficulty with extending CGT to non-UK residents revolves around how the Government will collect the tax. The delivery mechanism outlined in the consultation document is open-ended and it is apparent the Government is not clear as to how the new tax will operate in practice. The current proposal is that a new withholding tax will be applied at the point of sale of the property. The withholding tax would be applied by solicitors, accountants or property agents, and this will naturally lead to additional compliance requirements for such persons. The non-UK resident would have the option to pay the withholding tax or pay the actual tax based on the calculated capital gain within 30 days of the sale of the property, and so would sit alongside the Stamp Duty Land Tax (‘SDLT’) timescale for property purchases.

Finally, it is important to note that whilst the ATED currently applies to UK residential properties worth over £2m (this...
threshold is reducing to properties worth over £500,000 from 1 April 2016), the new CGT applies to all UK residential properties, irrespective of their value. In addition, unlike the ATED regime there are no reliefs from the new CGT for properties used in genuine businesses.

**Next steps**
If you are a non-UK resident that currently owns a UK residential property you should arrange a valuation of your property at April 2015 in anticipation of the introduction of the new CGT.

If you are considering selling a UK property, a sale within the next 12 months, i.e. before April 2015, will ensure the new CGT regime does not apply. It is expected that transitional rules will be introduced where exchange has occurred but the transaction is not completed by April 2015, but this should not be relied upon and planning for a sale to be completed before April 2015 will be the prudent approach.

If you are purchasing a UK residential property, due consideration should be given to the new CGT proposals and the existing ATED regime. Where the circumstances fit, acquiring a UK residential property through an overseas company may be appropriate and this would provide the option to subsequently sell the shares in the overseas company, in which case the new CGT would not apply. If acquiring a UK residential property through an overseas company, the ATED provisions would also need to be carefully considered. For details regarding the announcement at the 2014 Budget concerning the extension of ATED to properties valued over £500,000, please see our separate briefing note which can be accessed here.

**Comment**
It has been a longstanding principle of the UK tax system that non-residents are not subject to UK CGT, irrespective of where the asset concerned is located. The extension of CGT to non-UK residents selling UK residential property represents a significant change to the UK’s CGT legislation. In addition, the new CGT follows the introduction of ATED in 2013/14, and the extension of that regime to properties worth more than £500,000 as announced in the 2014 Budget. The significant changes to the taxation of UK residential property over the last two years has resulted in a complex taxation system and the latest proposals will no doubt add further intricacy and additional compliance requirements for non-UK resident investors.

If you wish to discuss the new provisions, please speak to your usual contact at Blick Rothenberg or:

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