

KEY CHANGES TO THE UNITED KINGDOM REGIME FOR THE TAXATION OF NON-TAX RESIDENTS OWNING UK RESIDENTIAL PROPERTIES

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Category: [CNPupdates](#)

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Authors and Contributors: Quek Li Fei, Simon Trevethick and Gladys Wong.

Over recent years, buyers of residential properties in the UK ("**Properties**") who are themselves not resident in the UK have usually been advised by their lawyers and other professional advisers to hold the Properties via a company or trust structure for tax minimisation purposes, especially inheritance tax. However, with changes to the UK tax regime, with some of the changes coming into effect as early as 1 April 2013, such advice may need to be reassessed because of the additional tax burden in the form of stamp duty, property tax and capital gains tax that will be imposed on companies holding Properties.

In this article, we briefly highlight the following forthcoming changes to the UK tax regime which are of importance mainly to non-UK tax residents with investments in Properties which are either held through companies or through trust structures which include an underlying holding company:-

- Annual residential property tax ("**ARPT**");
- Stamp duty land tax ("**SLDT**"); and
- Capital gains tax ("**CGT**").

New ARPT

ARPT will be levied upon Properties held by NNPs at the rates set out in the table below.

APPT	Price range of Properties
£15,000	Properties greater than £2 million but not greater than £5 million.
£35,000	Properties greater than £5 million but not greater than £10 million.
£70,000	Properties greater than £10 million but not greater than £20 million.
£140,000	Properties greater than £20 million.

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Increased Rate of SDLT

For Properties with a purchase price in excess of £2 million, the SDLT rate has been increased from 4% to 15% levied upon the entire purchase price of the Properties where the acquisition of the Properties is by the following non-natural persons ("**NNPs**") since 21 March 2012:-

- companies, if such company has a beneficial interest in the Property (i.e. not where it acts as mere nominee for an individual);
- partnerships with a corporate partner, including non-UK partnerships; and
- collective investment schemes.

Note that companies acting in the capacity of trustee of a settlement are excluded from the increased rate of SDLT. Also, with the new UK tax regime, there will be new reliefs provided for the increased rate of SDLT which is stated below.

Relief from ARPT and increased rate of SDLT

Under certain circumstances, relief will be available from the ARPT and the higher rate of SDLT for the following:-

- dwellings acquired and held for the purposes of a property development trade;
- dwellings acquired and held for rental to third parties (i.e. property investment business);
- employee accommodation;
- farmhouses where a working farmer occupies the farmhouse connected to the farmland;
- cases where the property is operated as a business, in which the said property is open to the public for at least 28 days per year on a commercial basis (whether to view the interior or for the provision of services);
- dwellings held by charities, embassies etc.; and
- conditionally exempt property (applicable to ARPT only).

CGT

It is proposed that CGT will also be extended to certain non-UK tax resident NNPs who are not currently liable to CGT, and will be chargeable on gains realised on disposals of Properties at the rate of 28% on any capital gain realised after 6 April 2013.

It is expected that this CGT will be extended to:-

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- non-UK tax resident companies;
- non-UK tax resident partnerships with a corporate member; and
- collective investment schemes.

Moving On (and what can be done now)

An indirect and important effect of the new measures will be that from **1 April 2013** any NNP owners of Properties caught by these rules will be obliged to submit a self-assessment tax return to the UK Revenue authorities. It is anticipated that each of the new measures will be policed through the UK land registry with whom all transactions in UK land are recorded. It should therefore be assumed that as from 1 April 2013 it will be open to the UK Revenue authorities to scrutinise the contents and tax compliance history of any structure throughout the world which owns UK residential property.

The failure of NNP owners to consider the changes to the UK regime for the taxation of non-tax residents owning UK residential properties is likely to result in significant tax liabilities. For NNP owners of Properties, the pressure is on. However, there are a number of options for restructuring which may be put in place **before April 2013** to mitigate the tax implications for NNP owners of such Properties. Each depends on the precise circumstances of the ownership structure of the Property and NNP owners of such Properties should contact their lawyers as soon as possible to mitigate such tax implications.

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