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

Posted on March 1, 2013

Category: CNPupdates

Date Published: 1 March 2013

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In our January 2013 issue of CNP Update, we briefly discussed some key changes to the UK tax regime pertaining to non-UK tax residents with investments in residential properties in the UK (the "**Properties**") which are either held through companies or through trust structures. Since then, more details on the legislation for inclusion in the Finance Bill 2013 relating to Annual Residential Property Tax ("**ARPT**"), Stamp Duty Land Tax ("**SDLT**") and Capital Gains Tax ("**CGT**") on non-natural persons ("**NNPs**") disposing of high-value Properties were announced. Below is a summary of the additional details.

ARPT

The draft legislation confirms that ARPT will apply to Properties, valued at greater than £2 million on specified valuation dates, held by the following categories of non-UK tax resident NNPs:-

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

As discussed previously, relief from the ARPT will be available on the following types of property:-

- dwellings acquired and held for the purposes of a property development trade;
- dwellings acquired and held for rental to third parties on a commercial basis;
- dwellings held to provide employee accommodation for the company's commercial purposes,
- farmhouses where a working farmer occupies the farmhouse connected to the farmland;
- dwellings held by charities, embassies etc.; and
- properties 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).

This new measure will take effect from ***1 April 2013***.

CGT

As discussed in the January 2013 issue of CNP Update, the draft legislation for CGT introduces a CGT charge at a rate of 28% on non-UK tax resident NNPs which dispose of Properties that are each worth more than £2 million. According to the draft legislation on CGT, this charge will apply to gains on disposals on or after ***6 April 2013***. However, increases in the value of the property before 6 April 2013 will not be subject to CGT under this measure.

It is intended, where possible, that such reliefs will relate to the same types of properties as detailed above in relation to the ARPT, and will be available to the same categories of non-UK tax resident NNPs as for the ARPT. The consideration threshold will also be reduced proportionately where the person owns only part of the property or disposes of the part of it. This is to ensure that CGT cannot be avoided through fragmentation of ownership.

Additionally, the UK Government has decided that in the interests of consistency, CGT will also apply to NNPs that are resident in the UK for tax purposes. Corporation Tax will continue to apply to UK tax-resident NNPs on the part of any gain accrued before 6 April 2013, with the new CGT charge applying only to the gain accruing on or after 6 April 2013.

SDLT

As highlighted in the January 2013 issue of CNP Update, it is proposed that relief from the 15% SDLT rate, available to the same categories of non-UK tax resident NNPs and in relation to the same types of property as for ARPT (as described above), shall apply to genuine commercial activities involving the purchase of Properties each with a value of over £2 million. However, such relief will be withdrawn if, within does not continue to satisfy the relevant qualifying conditions. It is intended that such exemptions will come into force on or after Royal Assent is given to the Finance Bill 2013.

What can be done now

There is no automatic right answer as to what structure should be put in place to mitigate the tax implications as a result of the changes to the UK tax regime highlighted above, as it will depend on the circumstances and relevant facts surrounding each specific case. Therefore, NNP owners of such Properties should consider the changes to the UK tax regime highlighted above and contact their lawyers at the earliest opportunity to consider various restructuring options appropriate to their circumstances which may be put in place ***before 1 April 2013.***

Reference

Please click here to view our January 2013 issue of CNP Update mentioned in this article.