UK200Group tax

talking tax

Issue 86 - August 2012

Will the new property tax affect the soaring London market being sustained by overseas investors?

The 2012 Budget contained various announcements in respect of UK residential property, which seem to be aimed at the overseas investors, who are currently not required to pay Capital Gains Tax on their UK properties. This is in effect the start of a new regime for £2 million plus residential property. The announcements affect Stamp Duty Land Tax ('SDLT'), Capital Gains Tax ('CGT') and the introduction of an annual charge:

Stamp Duty Land Tax

From 22 March 2012 SDLT was increased to 7% on residential properties worth £2 million or more in England and Wales purchased by individuals, but was increased to 15% if purchased by corporate entities (and other non-natural persons, including partnerships with corporate members).

It does not matter if the corporate entity is a UK company or an overseas company, the 15% rate will apply. HMRC state that the objective is to ensure that individuals and companies pay a fair share of tax on residential property transactions, to tackle avoidance, and to act as a disincentive of ownership of high value residential property in structures that would permit the indirect ownership or enjoyment of a property to be transferred in a way that would not be chargeable to SDLT.

The 15% rate is clearly a significant disincentive and clients, no matter how wealthy, are not going to be willing to pay this. It is worth bearing in mind that this only applies to transactions post 22 March 2012, and any properties already in structures will be protected from this change.

Annual Charge

With effect from 1 April 2013 the Government also announced a consultation on the introduction of an annual property tax on residential properties worth £2 million or more that are owned by certain non-natural persons. The definition of 'non-natural person' is the same as for the 15% SDLT rate and as such will not be applicable to trusts, but will apply to companies.

The charge is determined by the value of the property on the relevant valuation date. For the first five years, the relevant valuation date is:

- The value of the property on 1 April 2012, if owned on that date;
- The value on acquisition, if acquired later;
- If a subordinate interest is created in the property, the value of it at that date.

The valuations are to be self-assessed and will only need to be updated every five years. Currently the proposed annual charge amounts are…:

- £2m to £5m charge is £15,000
- £5m to £10m charge is £35,000
- £10m to £20m charge is £70,000
- £20m+ charge is £140,000

The charge will be pro-rated over a year where properties move in and out of charge. An annual charge return and the tax will be due on 15 April of the year in which the charge relates. Beneficial owners of the property will be jointly and severally liable for making returns and payments.

Capital Gains Tax

The Chancellor also announced a consultation on the introduction of CGT on the sale of residential property owned by overseas non-natural persons, which are disposed of for more than £2 million. This will come into effect from April 2013.

There is a wider definition of non-natural persons to include non UK resident trustees, clubs and associations and offshore entities that allows property to be held indirectly. At present bare trustees and charities are excluded. This measure will apply to the total gain accrued during the ownership of the property and not only the gain accrued after the implementation of the new charge in April 2013.

This applies to all residential property disposed of for in excess of £2 million regardless of its use. As such buy-to-lets are also caught. The rate of tax chargeable will be announced by the Chancellor in the 2013 budget.

With so many proposed changes it is best to start looking at your structures now if you hold residential property with a value in excess of £2 million to best mitigate the annual charge and CGT from April 2013.

About the author ...

Derek Rhodes - Trust partner at Alex Picot Ltd based in Jersey; Derek is a member of UK200Group Tax Panel. For further information on the above article please call either Derek or Chris Cotillard Tax Manager on 01534 753758 or email derek.rhodes@alexpicot.com or christopher.cotillard@alexpicot.com

Derek is also presenting a session on 'Tax structures for Offshore Property holdings' at our Property & Construction Training course taking place in London on the 25 September 2012.

Page 2 – for Q&A's supplied by Marcus Ward VAT Director at Price Bailey LLP

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UK200Group Talking Tax Q & As – August 2012

Members of our Tax Panel each month look at issues they have come across and share these with members and readers of UK200Group's *Talking Tax.*

This month's Q & As is supplied by Marcus Ward of Price Bailey LLP …

VAT and mail order…

Q – My internet business is expanding and I am now selling goods all over the EC. Does this create any VAT issues?

A – It could do; if you are selling to individuals (or any other non-business entity) then you should be charging UK VAT regardless of where your customer belongs in the EC. However, when these type of sales reach a certain limit, you will be required to VAT register in each Member State in which the threshold is breached. These are called the Distance Selling rules and apply in situations where the seller is responsible for sending the goods ("delivered goods").

Q - What are those limits?

A – Each Members state sets its own limit. However these may be broken down into two categories:

€ 35,000 (or near equivalent in domestic currency) Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Italy.

€ 100,000 (or near equivalent in domestic currency) Austria, France, Germany, Luxembourg, Netherlands, UK.

Q – What are the practical implications?

A – Each Member State has different rules for VAT registration and filing of returns. All dealings, save for a few Member States, are undertaken in the language of that country, so broadly, there could be 27 sets of rules and many languages to master in order to comply with the Distance Selling rules! Additionally, we find that some businesses are unaware of these rules, or discover the impact of them after the limits have been reached. This creates penalties for late registration and filing in nearly all Member States. However, mitigation (along the lines of "reasonable excuse" in the UK) in varying degrees is available in some countries. We have found that it is possible, via negotiation to have penalties reduced or removed after making full disclosure of past turnover. As one may expect, the approach varies from country to country.

Q – Do I have any choices?

A – Yes, although it is not necessary to register until the thresholds set out above are breached; it is possible to VAT register there on a voluntary basis rather than accounting for UK VAT. The considerations are usually; the VAT rate in the Member State concerned (compared to the UK) and; administrative simplification, ie; not having to change over from UK VAT to another Member State's VAT regime when the limit is reached.

Q – But what if I have accounted for UK VAT on these sales already, what can be done about that? I don't want to have to pay VAT twice to different authorities.

A – In our experience, HMRC do repay UK VAT overpaid if overseas output tax is due, but this sometimes becomes a struggle and HMRC require full explanation and precise evidence to support a repayment.

For further information on the above …
Marcus can be contacted on 01223 696114 or email Marcus.Ward@pricebailey.co.uk

Marcus is presenting at our Property and Construction Training course on the 25 September and our Tax course on the 10 October.

UK200Group
tax

UK200Group Tax Panel members are renowned for their depth of knowledge and can advise on all areas of taxation with special expertise and experience of multinationals, UK companies, privately-owned organisations, sole traders, family businesses, trusts, partnerships and private individuals. Straight forward general enquiries will be dealt with quickly and free of charge. More complex specific client enquiries may require a fee charge which will be discussed and agreed by both parties prior to any work being undertaken.

Tax enquiries can be posted to www.uk200group.co.uk members' home page under member's queries. The Centre is alerted to all enquiries posted on the UK200Group web site.

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