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Expert view: What Asians, others must know about UK tax changes on prime property.

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Editor's note: Recent UK tax changes on residential property have big implications for foreign investors, including those in Asia who have been among the most significant buyers of high-end bricks-and-mortar UK assets in recent years. To explore some of the implications, Jonathan Plimley and Anthony Tennant of Trust Corporation of the Channel Islands Limited take a look at the issues. As always, publication of these comments does not necessarily mean that this website endorses the views here. Feedback is most welcome from readers.

Many investors in Asia who invest in UK residential property do so through offshore entities and will need to be up to speed with some significant changes to the tax landscape.

Furthermore, fiduciaries managing structures which invest in UK residential property will be considering how these changes may fundamentally impact the beneficiaries of the structures under management -many of whom are either non-UK resident or UK resident but non-UK domiciled. Therefore it is important that fiduciaries are proactive in their response to them.

The story so far

The March 2012 Budget introduced an immediate rise in stamp duty land tax as well as proposals to be introduced in April 2013 for an extension of the scope of capital gains tax and an annual residential property tax in instances where high value UK residential property (£2million and above) is owned by non-natural persons. NNPs are comprised broadly of companies, partnerships with a corporate member and collective investment schemes.

The changes

On 11 December 2012, HM Treasury published the long-awaited response to the consultation document entitled "Ensuring the fair taxation of residential property transactions" together with draft legislation on the ARPT. Draft legislation on the proposed CGT changes will not be released until January 2013 therefore a number of points remain unclear until then.

A significant change arising from the responses is the stated intention for the new rules to focus on circumstances where an individual has acquired a high-value UK residential property using a NNP either for his own use or for the use of immediate family members. In addition, as opposed to the original consultation, the CGT and ARPT changes will now be aligned. This is a welcome amendment to the proposed rules.

In considering the changes there are three main aspects to consider:

Stamp Duty Land Tax

From 22 March 2012 SDLT was increased to 7 per cent on purchases of residential property with a value of £2million+ and a higher SDLT rate of 15 per cent was introduced for purchases of £2million+ residential property by NNPs. As a result of the consultation responses received, it is now proposed that there will be reliefs from the higher rate of SDLT for certain businesses, most notably where dwellings are acquired for a property development trade or where there is rental to unconnected third parties. There are several conditions for the reliefs to apply and advice should be sought in advance of any purchase. At the time of writing advisors are of the view that these reliefs will not apply until enactment of the 2013 Finance Act (July 2013) and the 15 per cent SDLT rate will apply to purchases by NNPs until that date.

Annual Residential Property Tax

The proposed rates of ARPT remain unchanged, starting at £15,000 per year for a property valued at between £2million and less than £5 million, rising in stages to £140,000 per year on properties valued at over £20 million. There has been significant change from the original proposals in that, as with SDLT, certain reliefs from ARPT will be available to certain NNPs carrying on businesses including those for rental (provided the property is not occupied at any time by a connected person) and NNPs carrying on a property development trade. To claim relief the NNP will still be required to submit a return – i.e. the relief is not automatic. A NNP holding property on 1 April 2013 will need to submit a return by 1 October 2013. For later years the return will need to be submitted by 30 April each year. Now that the draft legislation has been published, it should, subject to any revisions, be possible to determine if ARPT will apply to any particular entity and advice should be sought to determine this now.

New CGT charge

The rate of CGT will be 28% but as with ARPT, reliefs against the charge to CGT may apply. Perhaps the most encouraging point is the government's stated intent to limit the new charge to CGT on gains accruing from 6 April 2013. Advisors are waiting for the release of the draft legislation to determine how the CGT charge will operate. A key point is that this is a new charge and the existing charges that can apply to offshore trusts and companies where there are UK resident beneficiaries, continue to apply.

The way forward

All existing structures where high value UK residential property is held by a NNP should be reviewed.

Whilst the proposals do contain relief from ARPT and the new CGT charge, the specific circumstances of each case need to be carefully considered by advisors to ensure that the relevant conditions are met.

Where an individual has used a NNP to acquire a high value UK residential property (with a value of £2 million+ at 1 April 2013) for his own use or use by immediate family members, the merits of retaining the current structure should be reviewed urgently. In this situation the benefits of retaining the structure will need to be compared to alternative methods of ownership. The devil is in the detail and the amounts involved are rarely small. This is a complex area and, particularly if restructuring is desirable, expert advice needs to be sought since there are many traps for the unwary.

To summarise, all structures should be reviewed to ascertain whether there is potential exposure to the new taxes; the additional reporting requirements for ARPT should be noted; and, subject to examining the conditions, there may be relief given for certain rental and development businesses.