

## The Taxation of UK Residential Property - What is the Current Situation?

By Paul Webb, 28th November 2019

### Background

The past few years have seen dramatic changes to the taxation of UK residential property for both UK and non-UK residents. Detailed below is a summary of the current position (as of June 2019).

It is important that existing structures (particularly those with foreign company ownership) are continually reviewed to ensure that the anticipated benefits of such structures remain relevant.

### On Purchase of the Property

Before changes to the England and Northern Ireland Stamp Duty Land Tax (SDLT) rates were announced in December 2014, the SDLT regime worked on a 'cliff edge basis' and had a top rate of 7% (having been 4% for several years). A series of amendments to the SDLT regime resulted in two charging systems for SDLT:

1. If a property is acquired in the personal name of an individual, the SDLT rate is charged on a stepped basis rather than on a cliff edge basis, as detailed below:

Value up to £125,000	0%
Over £125,000 to £250,000	2%
Over 250,000 to £925,000	5%
Over £925,000 to £1,500,000	10%
Over £1,500,000	12%

2. If the property is acquired through a corporate structure the SDLT rate will be 15%. The only exception is if the residential property is acquired by a property development company, in which case SDLT will be charged at the same rate as for an individual.

An additional 3% is payable where a second or subsequent property is purchased, with a small number of exceptions. Worldwide property ownership is taken into account when considering whether a property is an additional residential property. Buy to let investors or those purchasing a second home will therefore pay the extra tax, and

trustees also fall within the scope of the 3% extension, unless a specific exemption applies. For this purpose, spouses are treated as one person so the extra SDLT cannot be avoided by purchasing properties in separate names.

SDLT is charged on the full acquisition price of the property.

### **During Ownership of the Property**

The Annual Tax on Enveloped Dwellings ("ATED") is a UK tax, which was introduced in 2013. Subject to certain exceptions, it is payable in respect of any residential property situated in the UK that was worth more than £1million in April 2012 or worth more than £500,000 in April 2016, and was/is owned or acquired, in whole or in part, by a company (but not by an individual).

ATED is charged on a daily basis and is payable annually in advance. Penalties and interest may apply to late and/or incorrect returns.

From April 2018 the annual charges range from £3,650 per annum, through to over £232,350 per annum for properties worth over £20million.

### **On Disposal of the Property**

The ATED charge does not apply to property owned in the name of individuals.

Generally, all residential property, other than that used by the owner as his principal private residence, is subject to CGT on disposal

Amendments have been made to the CGT element of the tax regime:

- ATED-related CGT charges were abolished with effect from 6 April 2019, after this date the relevant tax regime for companies disposing of UK residential property has been UK corporation tax.

The amendment to ATED-related CGT presents a potential tax saving opportunity for companies disposing of UK residential property. ATED-related CGT was charged at 28% on all gains made since 5 April 2013 with no indexation allowance, while corporation tax will be charged at 19% on all gains made since 5 April 2015, with an indexation allowance up to 31 December 2017.

- Residential property owned by individuals, that is not their principal private residence, whether rented out or not, is now subject to CGT on disposal for gains arising since 2015. Individuals are taxed on such gains at either 18% or 28%, dependent on the total amount of UK income and gains received by the taxpayer.

### **On Death**

As from April 2017, all UK situs residential property has been subject to the UK Inheritance Tax Regime (IHT), irrespective of the ownership structure.

Inheritance tax is chargeable at 40% of the market value at the time of death and is also potentially chargeable if the property was gifted away within 7 years prior to death.

Each individual has a £325,000 nil rate band (£650,000 per couple) and this will increase to a maximum of £500,000 per individual (£1million per couple) in 2020, where the property is the main residence of the deceased. This allowance is restricted for estates with a net value of more than £2million.

In most cases, there is an exemption from IHT on property left to a spouse.

### **Considerations for New Property Acquisitions**

When acquiring UK residential property it is important to consider the ownership structure prior to an exchange of contracts.

As indicated above, the CGT and IHT positions for the owner of a UK residential property, personally or through a company, are now broadly the same. There can still however be some tax savings achieved particularly if, the property is not to be used as the owner's main residence.

Other objectives may also be of importance. For example, a structure may be required to provide confidentiality, and this would need to be carefully planned, in order to minimise tax liabilities.

### **Additional Information**

If you require additional information on this topic please contact your usual Dixcart adviser or speak to Paul Webb in the UK office: [advice.uk@dixcart.com](mailto:advice.uk@dixcart.com).