PAYNE HICKS BEACH LLP
10 New Square, Lincoln's Inn, London WC2A 3QG

Telephone: +44 (0)20 7465 4300
Fax : +44 (0) 7465 4400
DX 40 London/Chancery Lane

New SDLT/CGT regime for UK Property

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UK Government attacks UK residential property ownership with new SDLT and CGT regime

Private Client solicitor Freddie Bjørn considers the announcements in the 2012 Budget and the subsequent Consultation Document relating to the taxation of UK residential property and real estate held by 'non-natural persons'.

In its Budget of 21 March 2012 the UK Government announced new rates of Stamp Duty Land Tax ("**SDLT**") and set out its plans for dissuading individuals from holding UK properties through non-natural persons by introducing a capital gains tax ("**CGT**") charge on those 'persons' and an annual levy on their properties. This was followed by a Consultation paper ("the **Consultation**") which was released on 31 May 2012 and which sought input on its proposals. The changes apply to residential property and real estate only but affect property which is rented out for commercial profit as well as property which is lived in by the individual and his family.

New SDLT Rates

With effect from 21 March 2012 a new SDLT band of 7% was introduced on the purchase of UK properties where the price paid exceeds £2 million. In the event that these properties are purchased by non-natural persons (i.e. companies; collective investments schemes or partnerships where a company is one of the partners - but not companies acting solely as trustee or nominee) the SDLT rate on purchase increases to 15%. This measure has been introduced to try to dissuade people from purchasing UK property through a corporate vehicle on the basis that this would then enable them at some later date to sell the shares (rather than the property itself) to a subsequent purchaser without triggering SDLT. It is important to note that the 15% charge applies both to UK and non-UK companies although there is an exclusion for property developers.

Annual Levy

For UK properties worth in excess of £2m and already held by a non-natural person the Government is introducing with effect from 1 April 2013 an annual levy which the Consultation confirms will be applied as follows:

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Property Value	£2m to £5m	£5 to £10m	£10m to £20m	Greater than £20m
Annual Charge	£15,000	£35,000	£70,000	£140,000

The Consultation confirms that the 'overall intention [of the Government] is that coverage of the annual charge will be the same as that of the 15% SDLT rate, with the same definition of non-natural persons'.

The Consultation also sets out, and asks for comments on, the rules relating to the definition of 'interests owned in residential property', noting that the annual 'charge will apply to a residential dwelling which may be all or part of a mixed use property'. The important point is that non-natural persons owning UK property will need to consider whether there is a chance they will be caught by the new rules even where they own UK property which has partial residential use.

Capital Gains Tax Charge

The Government is consulting on the proposed introduction of a CGT charge on residential property owned by non-UK residents (but only if 'non-natural persons') with a view to introducing legislation in April 2013. The charge will only apply on the disposal of residential properties by 'non-natural persons' where, for CGT purposes, the amount or value of the consideration (not just the gain) exceeds £2 million. The definition of 'non-natural persons' is wider for CGT purposes than it is for SDLT purposes and will include companies, trustees and collective investment vehicles, personal representatives, clubs and associations and 'entities which exist in other jurisdictions that allow property to be held indirectly'. Whilst this is broadly in line with what had been expected, the Consultation does confirm the following points which were not explicitly dealt with in the Government's Budget:

1 trustees will be included in the definition of non-natural persons so that non-UK trustees, for example, who have not been subject to CGT to date could well be affected. In certain cases this may negate the benefits of a non-UK trust owning UK property;

2 the extended CGT régime will 'apply to the whole of any gains that accrue on the disposal of assets that directly or indirectly represent relevant UK residential property'. This includes shares, interests or securities in property-owning companies where more than 50% of the underlying asset value is derived from UK property. This raises a number of questions, not least how such a charge can be policed, particularly in the event that a non-UK resident were to sell shares in an offshore company (which held a UK property) to another non-UK resident; and

3 the new rules will apply to the total gain accrued during ownership of a property and not only the gain accrued post April 2013. As a result it may be tax efficient to sell or trigger a rebasing of UK property in advance of the new rules being introduced.

The Consultation also confirms that the applicable rates of CGT will be announced in the 2013 Budget. Given the Government's stated intention to bring the CGT régime for residents and non-residents in line with each other it would seem likely that the rates will also be aligned.

In the Chancellor's Budget he announced that the proposed new rules were aimed at targeting 'the way some people avoid stamp duty...by using companies to buy residential property'. This is clearly reflected in the new SDLT rates and the proposed annual charge. However, the new CGT régime now appears to go further than the Government's original stated aim. The Consultation states that 'the aim of the CGT extension is to support the annual charge by creating a further deterrent to enveloping and to create more equal tax treatment between UK residents and non-residents'. The second part of this statement was not laid out in the Chancellor's Budget and suggests that the Government is also considering ways of bringing non-residents into the UK tax net. This would be a radical departure from

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the current CGT rules relating to non-residents and will be of genuine concern to non-residents invested in the UK if it turns out to be the forerunner to a more comprehensive alignment of the resident and non-resident CGT régimes. Consequently it will be interesting to see how these new rules are implemented and whether the Government announces wider reforms in this area, given the detrimental impact it would be likely to have on investment into the UK.

In Conclusion...

The Government says that the annual levy is 'being introduced to encourage those who own UK residential properties valued over £2 million in envelopes to take them out of those envelopes'. However, it has not offered any relaxation of the rules to enable people to de-envelope prior to April 2013 free of SDLT or CGT.

So, what can be done in advance of the publication of the response to the Consultation later in 2012 and the introduction of the new rules in April 2013?

In the majority of cases there will be planning opportunities available to mitigate the effects of the new rules provided that advice is sought in good time so that the relevant facts can be fully analysed. If you are seeking advice we would be happy to consider and advise on any property owning structures which may fall foul of the new rules using our extensive experience in advising on both UK and cross border tax and estate planning for both individuals and trustees.

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In the event that you do not have a usual private client advisor at Payne Hicks Beach please contact the author Freddie Bjørn by email.

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Tel: 020 7465 4300 Fax: 020 7465 4400 www.phb.co.uk