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## Taxation, Taxation, Taxation!

05 April 2012

***Private Client solicitor Freddie Bjørn considers the recent announcements in the Budget relating to the taxation of UK property held by 'non-natural persons'***

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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.

### New SDLT Rates

With effect from 21 March 2012 there will be a new SDLT band of 7% on the purchase of UK properties where the price paid exceeds £2m. In the event that these properties are purchased by non-natural persons (i.e. companies; collective investments schemes or partnerships in which a non-natural person is a company - but not companies acting in their capacity as trustees of a settlement) the SDLT rate on purchase increases to 15%. This measure has been introduced to try to dissuade people from purchasing 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 regardless of whether the non-natural person is based outside the UK, although there is an exclusion for property developers.

### Annual SDLT Levy

For UK properties worth in excess of £2m and already held by a non-natural person the Government is consulting on the introduction of an annual levy. The HM Treasury press release on the Budget 2012 costings sets out the following proposed rates:

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

However, the details and mechanics of the annual levy are not known at this time and will be dealt with during the consultation process prior to the levy's proposed introduction in April 2013. Whilst this is designed to penalise non-natural persons who have not had to pay the new 15% SDLT charge, so far there has been nothing to suggest that non-natural persons who purchase a property after 21 March

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2012 will be exempted from this annual levy, which provides a further deterrent.

## CGT Charge on residential property

The Government is also consulting on the proposed introduction of a CGT charge on residential property (of any value) owned by non-UK residents (but only if non-natural persons) with a view to introducing legislation in April 2013. The Government has provided very limited information on how this will work and consequently a number of questions arise, the most notable of which are:

- will the measures only apply to the sale of UK property by non-natural persons or will they also apply to the sale of shares in the holding company (for example) and if the latter, how will that be enforced?;
- will the definition of non-natural persons be the same as for SDLT purposes or will it be extended to include non-UK resident trustees (as some commentators fear)?; and
- will the base cost of the UK property be the market value at the time of original acquisition by the non-natural person or will it be taken from the date the legislation is introduced

In the absence of clarification on these points patience will be required to avoid taking any action which subsequently turns out to be unnecessary or detrimental.

## In Conclusion...

Whilst the new SDLT charges (of 15% and 7%) have already been introduced, there will be in depth consultations over the coming months (we believe the Government's initial consultation documents may be published in May) in respect of the other proposals, with the general view being that the CGT charge and the annual levy proposals go too far in trying to achieve the Government's ultimate aims. The Government appears to have reacted to exaggerated claims in the press that wealthy foreigners are exploiting tax loopholes and to have failed to consider the myriad of reasons an individual might buy through a company - the most notable of which is the inheritance tax benefits for non-domiciliaries.

There is currently a feeling amongst professionals that the proposed rules are unnecessarily aggressive and that they may well be 'watered down' following the various consultations. Consequently we would not generally advise taking any steps to mitigate the new taxes until such time as the extent of the rules is clear. We would however be happy to advise on any issues raised by the proposed changes discussed above and their resultant tax implications.

**5 April 2012**

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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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Specific advice should always be taken.