

Offshore ownership of houses – a triple tax crackdown

Wealth Management Guide for Private Clients
April 2012



Offshore ownership of houses – a triple tax crackdown

It was well trailed before the Budget on 21 March 2012 that the Chancellor wanted to crackdown on perceived Stamp Duty Land Tax (SDLT) avoidance enabled by the corporate ownership of UK residential property. The crackdown when it came was fiercer than expected, with three major tax changes.

New SDLT rate

The immediate change, which took effect from 21 March 2012, was the introduction of a new 15% rate of SDLT on purchases of UK residential property worth over £2m by "non-natural persons". This covers companies and partnerships with a corporate partner and is likely to include foundations as well. It will not affect trusts, even when the trustee is a corporation.

At the same time, the rate of SDLT on residential properties over £2m purchased by individuals was raised to 7%.

The additional tax burden on a £2m property bought through a company is the difference between 7% and 15% - £160,000. This is a significant deterrent and will put most people off. However, it may not just deter them from buying a property through a corporate vehicle, but may stop them buying a property in the UK at all.

For most non-domiciled individuals saving SDLT was probably not the main reason why they wanted to buy through a company. The corporate vehicle still had to pay SDLT when the property was bought and there was only a possibility of tax saving if the company itself could be sold down the line. This involved persuading a new purchaser to buy the company, which they were often reluctant to do. The main reason for using a company was often to save inheritance tax. Non-domiciled individuals (unless they become deemed UK-domiciled for IHT purposes by being resident in the UK in 17 out of the last 20 tax years), only pay inheritance tax on assets situated in the UK. If the asset that they owned was shares in a non-resident company rather than a house in the UK, there was no IHT exposure.

Non-domiciled individuals will now have to look at alternative ways of mitigating their inheritance tax liability, for example through using life assurance or by securing borrowing against the property.

The disincentive to buying in the UK will be enhanced by two further tax proposals contained in the Budget.

Annual Charge

The first proposal is an "annual charge" which will apply from April 2013. The Government will issue a consultation paper on how this will work in the next couple of months, but the proposed rates are as follows:

Property value	£2m-£5m	£5m-£10m	£10m-£20m	Greater than £20m
Annual charge	£15,000	£35,000	£70,000	£140,000

This annual charge will also only apply to "non-natural persons", in the same way as the 15% SDLT charge. We know no more than this at the moment, and it will be interesting to see the detail.

CGT extension

The Budget also proposed charging capital gains tax (CGT) on the disposal of UK residential property by "non-natural persons" who are non-UK resident. Importantly, this does not appear to be limited to properties valued over £2m, and includes offshore trusts as well as corporate vehicles. It therefore has the potential to affect a broader range of individuals.

If this new CGT charge is brought in, this will be a substantial departure from the existing CGT rules which do not generally tax the UK capital gains of non-residents directly. There are already mechanisms in place to tax gains made by offshore companies or trusts indirectly, for example where the shareholder is UK resident, or in the case of trusts where the settlor or beneficiaries are resident. It is unclear how this new proposal will interact with the existing rules.

What to do?

Neither the annual charge nor the new CGT rules will take effect until 6 April 2013 at the earliest. There is therefore time to plan and if necessary dismantle existing structures. Any restructuring will need to be handled with care in order to avoid unexpected tax charges.

Until more is known about these proposals, it is almost certainly too early to take any action. The time to review existing structures and where necessary to plan new structures, will come once the consultation papers have been issued, though there is concern that even these may be light on detail.

Contacts

Further Advice

To see our other publications [click here](#) or visit our website at osborneclarke.com

For further information please speak to your usual contact at Osborne Clarke or:



Sandra Brown
Partner, Private Client
T 0117 917 3052
F 0117 917 3053
sandra.brown@osborneclarke.com



Christopher Kerr-Smiley
Senior Associate, Private Client
T 0117 917 3070
F 0117 917 3071
christopher.kerr-smiley@osborneclarke.com

About Osborne Clarke

We are known for our ability to turn legal expertise into our clients' commercial gain.

With over 700 staff and 112 partners, we have offices in the City of London, Bristol and Thames Valley, Cologne and Munich and Silicon Valley in California. Following proposed mergers in July 2012, we will also have offices in Spain and Italy.

Through a network of 'best friends' we extend our reach across the globe, particularly in North America, EMEA & Asia Pacific. We have worked closely on matters with like-minded firms (normally experts in our key sectors) in many countries.

The material in this paper is provided for general purposes only and does not constitute legal or other professional advice. Appropriate legal advice should be sought for specific circumstances and before action is taken.