Taxing times

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Owners of UK real estate who are not resident in the UK can no longer expect to be exempt from both capital gains and inheritance taxes, warns Robert Walker

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The UK government has made significant changes to the taxation of residential real estate located within its borders.

This article focuses on those targeted at investors in UK residential property who are not resident in the UK ? the capital gains tax (CGT)and inheritance tax (IHT) changes.

There are of course other changes to the taxation of residential propert generally, such as the general Annual Tax on Enveloped Dwellings (ATED) regime, discussed below; interest relief restrictions as outlined in an earlier issue (*Property journal*, November 2015, p.18); and an additional 3% stamp duty land tax. All of these should also be considered by non-resident investors.

ATED gains

The first of the changes targeted at non-residents was the ATED-related gains regime, which charges non-UK resident companies, partnerships with corporate partners and collective investment schemes (CIS) to UK CGT at 28% on their residential property gains since 6 April 2013.

The ATED gains regime was initially introduced for residential properties with values in excess of ?2m at April 2013. It has since been extended to lower-value properties and, from 6 April 2016, will apply to properties with a value over ?500,000 as at that date, if held then, or at acquisition if later.

The ATED gains regime does contain a number of reliefs available for companies, partnerships and CISs making property available for certain commercial uses (e.g. letting a property on a commercial basis or developing it for sale).

Non-resident capital gains tax

The next measure is the non-resident capital gains tax (NRCGT) regime.

There is a certain amount of overlap between the ATED and NRCGT regimes. However, where an owner is subject to the ATED regime, this will take precedence.

Since 6 April 2015, the new NRCGT rules subject certain non-UK residents (e.g. individuals, trustees and corporations) to UK CGT on gains made from the sale of UK residential property.

The NRCGT regime is therefore potentially broader in application than ATED, given that it also applies to individuals and trustees.

The same 'commercial use' exemptions that apply for ATED do not apply to NRCGT (e.g. for property that is let), although there are exemptions for owners of institutional housing and all property portfolios owned by widely held investors. The tax rates for NRCGT are 20% for companies and 28% for individuals and trusts.

The NRCGT rules apply to disposals of residential properties since 6 April 2015. However, the charge is limited so that it applies to gains since 5 April 2015 only. For example, say a property was worth ?1m at the time of acquisition in 2007 and ?3m at 5 April 2015. It is then sold in 2019 for ?5m. The NRCGT gain is ?2m.

Given the April 2015 'rebasing', it is well worth non-resident owners of UK residential property obtaining an April 2015 property valuation.

'Disposals' for NRCGT purposes include the sale of freeholds and the sale or grant of residential property leaseholds and also include granting the right to acquire housing off plan.

The notification deadline for NRCGT is reasonably tight. A return must be filed within 30 days of the disposal and a return must be made for each disposal.This deadline could prove problematic for non-resident landlords granting multiple residential leases. Each grant of a lease will constitute a notifiable disposal for NRCGT purposes.

Penalties will apply where returns are not submitted on time, even where there is no NRCGT liability.

IHT and residential property

The final measures directed at non-UK owners of UK residential property are the proposed IHT changes. From 6 April 2017, UK residential property held by non-UK domiciled individuals through offshore companies, partnerships and other opaque vehicles, or held in an excluded property trust, will be brought within the UK IHT net. This will apply to all UK residential property, whether it is occupied or let, and of any value.

The 40% IHT charge takes effect on death, on gifts of shares in overseas companies that own UK residential property, and on the 10th anniversary of a trust holding shares in a non-resident company that owns UK residential property.

Policy

The UK government?s intention in making the various changes is to address the 'significant unfairness' in our property tax regime, that is, the discrepancy between UK and non-UK resident investors. It will be interesting to see whether, in doing so, it curbs the appetite of overseas investors for UK residential property.

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Further information

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