BRIEFING NOTE

February 2013

ROOKS RIDER SOLICITORS

UPDATE ON PROPOSED CGT CHARGES ON RESIDENTIAL PROPERTIES OVER £2 MILLION

Background

Following the draft legislation on the Annual Residential Property Tax ("**ARPT**") issued in December 2012 and the consultation on "ensuring the fair taxation of residential property transactions", draft clauses forming part of Finance Bill 2013 were issued by HM Government on 31 January 2013 which set out the CGT provisions applying to ARPT – related disposals

CGT on ARPT – Related Gains

HM Government's draft legislation introduces an extension to the present CGT regime to include "relevant high value disposals" by "non-natural" persons ("**NNPs**") of UK residential property valued over £2 million.

NNPs are those within the scope of the ARPT and include companies, collective schemes and partnerships (with a company as one of the partners).

As anticipated, the charge will not apply to trusts that directly hold UK residential property over £2 million.

Application to UK Companies

The draft legislation applies to UK companies as well as non-UK companies. Companies that are within the charge to UK corporation tax will be liable to this CGT charge in respect of such disposals rather than corporation tax on gains accrued after 6 April 2013.

In common with the exemptions available under the new SDLT and ARPT provisions the exemptions are as follows and are intended to exempt genuine commercial activities from the charge:

- Property development businesses
- Rental and trading businesses
- Properties which are run as businesses
- Residences for employee accommodation
- Charities
- Farmhouses
- Certain other state-owned properties

Capital Losses

The draft legislation also includes provisions on how to treat capital losses arising on ARPT -related disposals. It is intended that ARPT - related losses will be subject to a separate, but parallel, regime. These are intended to fall outside the usual CGT or corporation tax rules. This means that ARPT-related losses will be ring-fenced and can only be set off against ARPT -related chargeable gains in the same tax year or, when the losses exceed the gains for the year, carried forward and set off against ARPT - related chargeable gains in later years.

CGT Rate

The draft legislation sets out how the new CGT on ARPT - related gains will work. This applies by reference to a period where the residential property falls within the ARPT regime.

The rate at which ARPT - related CGT will be charged to NNPs affected by these rules is 28% with tapering relief available where the residential property is worth just over £2m. The consideration threshold will be reduced proportionately where the person owns only part of the property or disposes of part of it, to ensure the charge cannot be avoided through fragmentation.

ARPT - related CGT will only arise on gains accruing after the introduction of these rules, resulting in an effective rebasing for CGT purposes at 5 April 2013.

The rebasing to market value as at 5 April 2013 will be automatic. Whilst any gain prior to 6 April 2013 should fall outside the new CGT rules this will not preclude the operation of any other anti-avoidance provisions in relation to gains attributable to the period prior to 6 April 2013.

It is possible for an irrevocable election to be made to disapply the rebasing. The election must be made in a CGT return (or an amendment to the return) for the tax year in which the disposal is made, or for the first tax year (from 2013-14 onwards) in which a part disposal is made.

Action

The draft legislation is still open for comments until 22 February 2013 but the new ARPT - related capital gains measures are intended to take effect from 6 April 2013.

Those structures owning UK residential property worth more than £2 million should be reviewed without delay.

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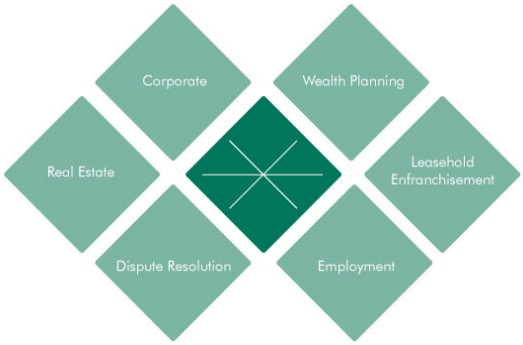

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