BRIEFING NOTE

July 2013

ROOKS RIDER SOLICITORS

Updated UK Report Summary - ITSAPT Article

Updated 30 July 2013

- High Value Residential Properties
- General Anti-Abuse Rule (GAAR)
- New Statutory Residency Test
- What's Next

Introduction

The UK tax environment has continued to provide challenges for HNWIs and their professional advisers in the last year. Whether considering the new tax proposal for High Value Residential Properties first announced in last year's March Budget or the proposals for the General Anti-Abuse Rule (GAAR), they demonstrated the government's willingness to tackle and try to curb the practice of aggressive tax avoidance.

For those seeking long term stability there remains further uncertainty with evidence that almost a fifth of foreign HNWIs have already left the UK since 2008, no doubt convinced the UK tax system is too hostile. Although parliament has recently rejected Labour Party calls for a "mansion tax", the fear persists also that politicians want to shift the tax burden away from income to assets.

High Value Residential Properties

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High Value Residential Properties

A number of proposals were announced in last year's Budget targeting high value properties (above £2m) owned by non-natural persons (NNPs). NNPs are defined as companies (both offshore and UK), collective investment vehicles and partnerships with one or more corporate partners. A trust is not a NNP. In addition to the new Stamp Duty Land Tax (SDLT) introduced last year and payable at 15% where a NNP acquires a UK property worth more than £2m, the key measures introduced on 6 April 2013 in short are as follows:-

- An Annual Tax Charge (ATED) is levied on a sliding scale from £15,000 to £140,000 depending on the value of the property if residential property worth more than £2m is owned by a NNP; and

- The disposal of UK residential property worth more than £2m by a NNP will be subject to CGT at 28%.

Following earlier consultation, HMRC confirmed these measures were not as extensive as first feared. In particular, it is now noted for instance that genuine businesses carrying out genuine commercial activity are outside the scope of these proposals. In the event the disposal of a property is subject to CGT, it will only apply to gains arising after 5 April 2013 and, where the property is worth just over £2m, tapering relief will reduce the chargeable gain to tax. This is to remove any incentive to sell a property at undervalue to fall below the £2m threshold.

Where a structure is caught by the new measures it will be necessary to weigh up the benefit of the inheritance tax (IHT) shelter afforded by the "envelope" versus the costs of the ATED charge, as well as a possible CGT charge on disposal by the NNP. If a high value residential property is being acquired for personal use then direct ownership is also worth consideration. However there may still be occasions when it is appropriate to use an envelope structure and acceptance of the new provisions will be key. Each case must be decided on its merits.

General Anti-Abuse Rule (GAAR)

NNPs and their beneficial owners will also have to consider the impact of the General Anti-Abuse Rule, which applies from the date Finance Act 2013 received Royal Assent, i.e. 17 July 2013. The GAAR provides for the re-characterisation of transactions that are

considered abusive to counteract any tax advantages and it has been confirmed GAAR will not apply to any steps taken before 17 July 2013. The creation of any new structures or restructuring carried out after that date will be subject to the new rules, although Patrick Mears, the Chair of the GAAR Advisory Panel, has stated recently that he did not expect the Advisory Panel to give any opinions in the next 18 to 24 months (except in SDLT matters, for which it may have to opine sooner.) In that initial period it is anticipated the Advisory Panel will focus on the GAAR guidance, meeting quarterly to consider the principles underlying the examples of abusive and non-abusive transactions.

New Statutory Residence Test (SRT)

The Finance Act 2013 also introduces the SRT and abolishes the concept of ordinary residence with effect from 6 April 2013. The detail of the SRT is set out in the legislation, together with further detail provided in HMRC's guidance note of May 2013.

From 6 April 2013 an individual will be resident if he does not meet the automatic overseas test and meets the automatic residence test or if he has sufficient ties within the UK. Does this provide absolute certainty? I think taxpayers and their advisors should be able to assess residency status in a reasonably straightforward manner in most cases, although international businessmen may have to tread carefully, the SRT has a large number of definitions which will need to be kept in mind in applying the various tests.

What's Next?

David Cameron's message earlier this year in Davos that tax avoidance strategies currently being employed are too aggressive and unacceptable is perhaps typical of the current political environment. Nevertheless there are still opportunities and advantages for those individuals coming to the UK or even for those non-UK domiciliaries who have already been here for some time. Undoubtedly, the UK continues to be a jurisdiction where planning will be key to guard against forthcoming legislation and further developments in the coming years. High net worth individuals based here will continue to face further complex tax and regulatory issues, so in most respects international tax planning, tax minimisation and maintaining tax efficient investments and remuneration has really never been more challenging for HNWIs and their advisers.

In general terms of course this comes against a background in which UK/G8 leaders probably feel caught out by their own failure to keep up with recent developments offshore so multilateral action and international co-operation between jurisdictions, as promoted by

David Cameron at the G8 Summit in June, are more than likely to gather pace now. In addition the UK is already engaging within the G20 and OECD to promote information exchange and maintaining pressure on non co-operative jurisdictions to fall into line. Bilateral agreements such as the UK/Swiss Tax Agreement, Liechtenstein Disclosure Facility and the Isle of Man, Guernsey and Jersey Disclosure Facilities are likely to become more widespread also.

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If you would like any more information or would like to discuss any of the issues raised, please contact:

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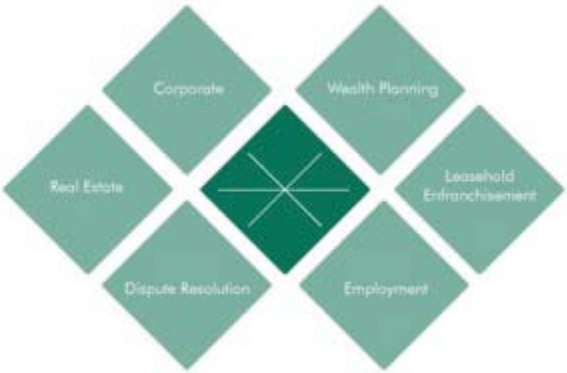

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