EUROPEAN TAX ADVISORY

BUDGET
REAL ESTATE TAXATION

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BUDGET: REAL ESTATE TAXATION **20 MARCH 2013**

SUMMARY

The wish expressed by a number of investors and managers at this year's global MIPIM property conference was for a 'boring budget'. In terms of new or unexpected measures impacting the property industry their wish has largely been fulfilled. In particular there will be relief that the Chancellor has continued to resist pressure to levy the owners of UK property with further hikes to stamp duty land tax or any form of "mansion" tax.

Owners of residential property valued at more than £2m who have structured their ownership to be held indirectly (e.g. via a company or trust) are subject to a number of additional charges and levies.

For commercial property companies which are not structured as REITs, the reduction in the main rate of corporation tax to 20% from April 2015 will entirely erode the tax rate benefit of holding property offshore in relation to property rental income (the latter being subject to income tax at 20% for non-resident companies or trusts). The potential advantages in terms of tax on capital gains and possibly stamp duty land tax should continue to be enjoyed by offshore structures holding UK commercial property.

EXPENSIVE RESIDENTIAL PROPERTY > £2M

Where such property is not directly held (i.e. it is held by 'non-natural' persons or 'NNPs') then the following charges and levies will apply:

- Tax on capital gains will apply to a disposal of such properties by the NNP, wherever the NNP is tax resident. It is unclear, however, if the charge will extend to a disposal of the NNP itself;
- Annual levy

Properties Valued at	Levy (£)
£2m<Property ≤£5m	15,000
£5m<Property ≤£10m	35,000
£10m<Property ≤£20m	70,000
>£20m	140,000

A 'NNP' is defined as a:

- company;
- a partnership with a corporate member and
- a collective investment scheme (defined under s235(1) FSMA 2000 as "any arrangements with respect to property…the purpose of which is to enable persons taking part in the arrangements to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property.")

The following are excluded from the annual levy (and also from the 15% SDLT charge applicable to NNPs acquiring expensive properties), provided they are not let to, or otherwise occupied by, connected persons:

- Commercial rental businesses
- Commercial property development businesses
- Property trading businesses
- Businesses in which the properties are open to the public for at least 28 days a year on a commercial basis.
- Accommodation for employees, provided the employee has a less than 5% interest in the company
- Properties owned by charities (provided not occupied by a substantial donor)
- Farmhouses in certain circumstances
- Certain other purposes, including properties conditionally exempt from inheritance tax

STAMP DUTY LAND TAX

The SDLT rules for commercial property are unchanged although the new GAAR will apply to SDLT when it comes into effect on Royal Assent this year.

The Chancellor carried out his threat in last year's Budget to use retrospective legislation to counter schemes avoiding SDLT on residential property. A scheme exploiting the current sub-sale rules has been closed down with effect from 21 March 2012.

The sub-sale rules are being reformulated in order to remove what has been a focus of many avoidance schemes over the 10 years of SDLT. The legislation will be published in the Finance Bill next week.

STAMP DUTY RESERVE TAX ON UNIT TRUSTS AND OEICS

From April 2014 the SDRT charge applying to some trades in units or shares in UK collective investment schemes owning UK shares or real estate will be abolished

INFORMAL CONSULTATION ON TREATING REITS AS “INSTITUTIONAL INVESTORS”

The Government will legislate to allow a UK REIT to treat income from another UK REIT as income of its tax exempt property rental business. The measure will have effect for accounting periods beginning on and after the date that Finance Bill 2013 receives Royal Assent.

The Chancellor also announced that the Government would further consider the case for REITs being included within the definition of an “institutional investor”.

The latter announcement follows on from recommendations received during the informal consultation on two possible reforms to the REIT regime: a) the tax treatment of REITs investing in REITs and b) the potential role social housing REITs could play to support the social housing sector, which took place between 4 April and 27 June 2012.

PREVIOUSLY ANNOUNCED MEASURES

A couple of previously announced measures are worth re-iterating:

PROPERTY RATES

Although not the response the property industry has been vociferously lobbying for, to promote further private investment, the Government plans to exempt all new commercial property completed between 1 October 2013 and 30 September 2016 from empty property rates for the first 18 months, up to the state aids limit and subject to consultation. The temporary doubling of the Small Business Rate Relief scheme is to be extended for a further 12 months from 1 April 2013.

CAPITAL ALLOWANCES

A significant temporary increase in the Annual Investment Allowance from £25,000 to £250,000 for qualifying investment in plant and machinery will be available for two years from 1 January 2013. The intention is to encourage and incentivise business investment in plant and machinery particularly among small and medium sized businesses. The allowance was of course only reduced from £100,000 to £25,000 in April 2012.

OTHER MEASURES

The Government's pledge to significantly increase UK infrastructure spending should provide a welcome boost to the UK's beleaguered construction sector, particularly when combined with the proposed new private finance initiative (PF2).

CONTACT:

Ian Mackie
+44 (0)20 7979 7481
ian.mackie@fticonsulting.com

Bas Kundu
+44 (0)20 7979 7506
bas.kundu@fticonsulting.com

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