

Draft legislation on the new capital gains tax ('CGT') charge on sales of £2m+ UK residential property has now been published. The draft legislation on the new Annual Residential Property Tax ('ARPT') has also been updated.

Existing structures should be reviewed to allow for planning before 6 April 2013. Non-residential property is not affected by these changes.

Key changes for £2m+ UK residential properties

The key changes, which apply to UK residential properties valued at over £2m, are:

- an increased rate of stamp duty land tax ('SDLT') of 7% - this is effective already;
- a new 15% rate of SDLT on the acquisition of properties bought by companies, partnerships (with a corporate member) or collective investment schemes, whether onshore or offshore - this is also already effective;
- from 6 April 2013, a new charge to CGT on gains accruing post 5 April 2013 will apply at 28% on disposals of properties by **UK & non-UK** resident companies, partnerships (with a corporate member) or collective investment schemes. **The charge will not apply to trustees (corporate or individual);** and
- from 1 April 2013, the ARPT will apply to properties owned by companies, partnerships (with a corporate member) or collective investment schemes (UK or non-UK) at the following rates:

Property value	Proposed annual charge
£2m - £5m	£15,000
£5m - £10m	£35,000
£10m - £20m	£70,000
£20m+	£140,000

ARPT

The ARPT is payable annually from 1 April 2013, for the period 1 April to the following 31 March.

The ARPT is self assessed and will be based on the market value of the property interest on:

- 1 April 2012;
- every 5 year anniversary of 1 April 2012;

- where an interest is acquired (or there is a part disposal of an interest) during the 5 year period, the date of acquisition (or part disposal).

Reliefs from the ARPT

The ARPT will not apply where a property is:

- held for the purpose of:
 - a property development business;
 - letting to third parties on a commercial basis;
 - a property trading business;

provided that the property is not occupied by a person connected to the company (e.g. the sole shareholder or, in the case of a company held by a trust, the settlor or a beneficiary of the trust)

- run as a business (e.g. a public venue) – the property must be open to the public for at least 28 days a year on a commercial basis.

Where relief from the ARPT is claimed for part of the chargeable period (1 April to the next 31 March), the ARPT is calculated on a daily basis. Relief from ARPT must be claimed by submitting an ARPT return.

CGT charge

From 6 April 2013, a new 28% CGT charge will apply on disposals of properties by UK and non-UK resident companies, partnerships (with a corporate member) or collective investment schemes.

The charge will apply:

- if the ARPT was payable on the property for any day while it was owned; and
- the property is sold for more than £2m (or its market value is more than £2m where it is disposed of to a connected person).

Because the new CGT charge only applies if the ARPT was payable on at least one day during the period of ownership, in most cases, no CGT charge will arise on the sale of a property interest for more than £2m between now and 31 March 2016, if the property interest was worth less than £2m on 1 April 2012.

The CGT charge will only apply to gains accruing on properties on or after 6 April 2013. This means that properties are effectively rebased to their 5 April 2013 market value. An election can be made not to apply this rebasing (e.g. where there is a loss).

Where a property is not subject to the ARPT for part of the time it is owned, only part of the post 5 April 2013 gain will be subject to tax. The part of the gain subject to tax is calculated by reference to the number of days on which the ARPT was payable.

If the property is owned by a non-UK resident company, any gain subject to the new CGT charge will not be attributed up to the shareholders of the company under s 13 Taxation of Chargeable Gains Act 1992 ('TCGA'). Part of the gains on a disposal may not be subject to the new CGT charge (for example, where the property was not subject to the ARPT for part of the period of ownership). Those gains will still be attributed up to the shareholders of the company under s 13 TCGA.

Note that where property is disposed of by:

- non-UK resident trustees;
- non-UK resident individuals; or
- UK resident individuals in occupation of the property as their main residence (and so benefitting from Principal Private Residence relief);

no CGT should arise under the current or new provisions.

For UK companies, any element of the gain not charged under these provisions, is subject to corporation tax.

New UK residential property purchases

The new punitive 15% rate of SDLT only applies to new acquisitions of £2m+ residential property by non-natural persons and is intended to deter people from buying UK residential property through companies (UK or non-UK). Trustees (corporate and individual) are exempt from the 15% SDLT rate in most cases and so, like individual purchasers, will pay SDLT at the 7% rate.

Given the new 15% SDLT rate, ARPT and CGT exposure, corporate acquisitions will now be less attractive, even though corporate ownership can still mitigate income tax and provide protection from UK inheritance tax ('IHT'). Despite the changes, purchases of shares of existing property holding companies may still be an option.

These new provisions (as intended by the proposals) can be avoided by purchasing in personal names. However, there are disadvantages:

- where the property is rented out, income tax is payable at a maximum rate of 50% (45% from 6 April 2013) on the net rental income. This can be

reduced by interest paid on third party finance taken out to acquire the property;

- UK property held directly will be subject to UK IHT on death. This exposure can be mitigated, for example, by taking out borrowing secured against the property, or insurance;
- confidentiality would be lost, however it could be protected by purchasing the property through a nominee.

Other options for a new purchase (or restructuring) include a non-UK resident trust, which should not be subject to the 15% SDLT charge, the ARPT or the new CGT charge. The income tax and IHT issues which arise with personal ownership remain, but a trust gives some additional flexibility, whilst providing asset protection and confidentiality benefits.

Key points

- The 15% SDLT rate, ARPT and new CGT charge only apply to acquisitions and holdings of UK residential property, worth more than £2m, by companies, partnerships (with a corporate member) and collective investment schemes.
- UK residential property purchased for development, trading or commercial letting will in most cases be exempt from the new taxes.
- The new CGT charge only applies to gains accruing on the property on or after 6 April 2013.
- Purchases of shares in non-UK resident companies are not caught by these provisions.
- The new CGT charge does not apply to non-UK resident trustees (corporate or individual).
- Many high value UK residential properties are held via non-UK companies, which are themselves held via non-UK trusts. Many of these structures will still be affected by these new provisions, and restructuring may be required. However considerable care will need to be taken to ensure that any restructuring does not of itself cause tax charges under existing anti-avoidance legislation.

This note is a general guide based on the current law and proposals as at 31 January 2013. Tailored advice on the facts should be sought to confirm the precise UK tax implications and ensure the right acquisition structure.