# Holding & investing in UK real estate post Finance Bill 2013

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## Background

The Government has now responded to the consultation on the new measures taxing £2m+ residential property. Draft legislation on the new annual charge is available now, with draft legislation on the new capital gains tax ('CGT') charge delayed to January 2013.

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

The new provisions are intended to encourage investors to unwind offshore structures holding UK residential property.

The key changes, which apply to 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 corporate member) or collective investment schemes, whether onshore or offshore - this is also already effective;
- from 6 April 2013, a new charge to CGT at 28% on disposals of properties by non-UK resident companies, partnerships (with a non-UK resident corporate member) or collective investment schemes. **The charge will not apply to trustees (corporate or individual). This charge will only apply to gains accruing on the property on or after 6 April 2013. The proposed CGT charge on the disposal of shares in property holding companies has also been dropped**; and
- from 1 April 2013, an annual charge on properties owned by companies, partnerships (with 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 |

## Existing property holding structures

UK residential property is held through non-UK resident companies (directly or via a trust) for a number of reasons:

- rental income is taxed at 20%;
- the company shields non-UK domiciled (and not deemed domiciled) individuals against UK inheritance tax ('IHT') on the property;
- no SDLT is payable on the purchase of shares of a non-UK resident company;
- the disposal of the property by the company should be free of CGT;
- confidentiality, as the company not the individual is listed as the owner at the Land Registry (even if only a nominee); and
- limited liability, and structuring advantages.

None of the above has changed, except for the CGT free disposal. The new provisions mean that on a sale of the property for £2m+ by the non-UK resident company, gains accrued post 5 April 2013 may be subject to a new CGT charge at 28%.

In addition, if the property is worth £2m or more, there will be a new annual charge based on the value of the property, although that will not apply to trustees (or foundations).

## Exemptions from new CGT charge

The new CGT charge 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 – properties which are open to the public for at least 28 days a year on a commercial basis, for example, as a venue, to provide accommodation or other services.

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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.

## New UK residential property purchases

Specialist tax advice should be sought on any purchases of UK residential property, whether for investment or for personal use.

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, annual charge and CGT exposure, corporate acquisitions will now be less attractive, even though corporate ownership can still mitigate income tax and provide protection from 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 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 annual charge 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, new annual charge 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.
- 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.
- The proposals are not yet final. Further details of the new rules are to be published in January 2013.

**This note is a general guide based on the current law and proposals as at 11 December 2012. Tailored advice on the facts should be sought to confirm the precise UK tax implications and ensure the right acquisition structure.**

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