# REAL ESTATE TAXES: CLARITY AT LAST - December 2012

Last week the government published further details regarding non-natural persons, otherwise known as companies, collective investment schemes and partnerships (wherever they are resident) holding high value residential property in the UK.

The annual residential property tax and capital gains tax is not as all encompassing as originally publicised but non-natural persons may well need to restructure before the rules come into force on Monday 1st April 2013.

There is good news in that the original consultation paper has been effectively diluted and the repercussions will be much less severe than originally thought:

## Annual residential property tax (ARPT)

- This tax will apply to UK residential properties worth more than £2 million and which are owned by non-natural persons as from 1 April 2013 - rates:

  £2m - £5m     = £15,000
  £5m - £10m   = £35,000
  £10m - £20m = £70,000
  £20m+           = £140,000

- Companies which are resident in the UK - not just offshore entities.

- The chargeable year will run from 1 April to 31 March - not the same as the UK tax year.

- Those affected will have to file their first returns by 31st October 2013; thereafter the deadline for the filing of returns is each 30th April, which each charge payable by 31st October.

- Non-UK resident trusts which hold residential property directly will not be subject to ARPT.

- Where a relief is available, it will have to be claimed each year.

## Capital gains tax (CGT)

- From 6th April 2013 CGT will be charged at 28% on the disposal of high value residential property owned by non-natural persons.

- The government will tax only gains that accrue from 6th April 2013.

- The CGT regime will be extended to disposals of UK residential property held by the relevant non-resident entities.

- Properties which are worth just over £2 million will benefit from a form of tapering relief to reduce the CGT charge in practice.

- An offshore trust which holds property directly will not be subject to the CGT charge, although there will be inheritance tax (IHT) issues which the trustees should consider.

## Stamp duty land tax (SDLT)

- SDLT will continue to be imposed at the rate of 15% where non-natural persons purchase UK residential property worth at least £2 million.

It is now clear that if the non-natural person is liable for the annual charge then they are also liable for the SDLT increase and the CGT from 6th April 2013.

But there are a number of significant reliefs from all three of these taxes for genuine businesses carrying out authentic commercial activity:

- property held for the purpose of the property development trade of the company

- property held for the purpose of letting to third parties for rent on a commercial basis

- property held for the purpose for the trade of buying and selling property

- There is also relief from the 15% SDLT for property being purchased as a buy-to-let and if three years rental income is declared, the non-natural person will only be charged SDLT at the rate of 7%.

It is important to highlight as previously referred to, trusts both onshore and offshore irrespective of whether they have corporate or personal trustees are exempt from the annual charge and the higher rate SDLT.

A potential solution to the CGT and IHT charges may be sought in debt finance. By leveraging the asset, the level of investment given to CGT and/ or IHT could be significantly reduced.

All circumstances will of course be subject to professional qualification.