Briefing

BURGES SALMON

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Is there still any point in owning a home through a company?

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What are the recent and upcoming changes to the UK tax regime relating to the ownership of UK residential property through corporate structures?

The changes have come thick and fast over the past few years. To date the changes have included:

- from 1 April 2013, an annual charge (the annual tax on enveloped dwellings commonly referred to as "ATED") was introduced for UK residential properties worth more than £2 million as at 1 April 2012 and owned by companies (with the threshold for a charge lowering to £1 million from 1 April 2015 and £500,000 from 1 April 2016) – some reliefs from the charge are available but the charge is likely to apply if the property is held for personal use
- companies with properties within ATED also face ATED-related capital gains tax ("ATED-CGT") on disposal of those properties for any gain in value during the period the charge has applied
- from 22 March 2012 the maximum rate of stamp duty land tax ("SDLT") rose to 15% for properties acquired by companies
- from 17 July 2013, significant restrictions on the deductibility of debts for inheritance tax purposes were introduced which often have an impact when considering whether and how to 'de-envelope'
- from 6 April 2015 all non-UK residents have to pay capital gains tax ("CGT") on the sale of UK residential properties at a gain (although the new non-resident CGT charge only applies to the post 6 April 2015 element of the gain)
- from 1 April 2016 SDLT rates have increased by 3% when charged on purchases of UK residential property acquired in addition to an individual's principal private residence (which again can be very relevant when considering if and how to 'de-envelope')

And the changes haven't finished yet. From 6 April 2017 UK residential property held via an offshore company will cease to be treated as an offshore asset for UK inheritance tax purposes. This is a major change as many non-UK residents currently hold UK residential properties through offshore companies to avoid any exposure to UK inheritance tax.

Further, those who let-out UK residential property will have tax relief on the expenses of letting (including mortgage interest) restricted to 20% in future. This change will be introduced gradually from 6 April 2017 onwards and again will be relevant when considering whether to 'de-envelope' a buy-to-let property.

Is there any advantage – tax or otherwise – to owning a home through a company following these developments?

In some circumstances there will still be UK tax advantages to holding through a company but it will depend very much on the facts of each specific case.

From 2017 it is hard to think of many circumstances when it would be preferable from a UK tax perspective to hold a UK residential property owned **for personal use** through a company. Even if you ignore other potential tax issues, the ATED charge with no possible inheritance tax protection (assuming the shareholder is non-UK domiciled and the company is offshore) makes it hard to see why this would be attractive. One theoretical advantage might be the ability to sell the shares in the company to a purchaser keen to avoid a potential SDLT charge if the property was purchased directly, but in reality I can't see many purchasers being keen to take on companies with all the issues that brings, particularly as time passes and unrealised gains on properties within such companies increase.

The position is slightly different for UK residential properties owned **purely for investment** (buy-to-let). There may still be UK tax advantages to holding buy-to-let properties through offshore companies, particularly if the relevant shareholder is non-UK resident. Whilst offshore companies are now subject to CGT on gains realised on the sale of UK residential properties, provided they are not within the ATED-CGT charge (and they shouldn't be if the property is a genuine buy-to-let), the maximum rate of CGT is currently 20%, lower than the maximum rate of 28% that applies to non-resident individuals realising gains on UK residential properties. Further, offshore companies will, in the first instance at least, only be subject to income tax at the basic rate of 20% on the profits of their property rental business, with full tax relief on the expenses of letting (including mortgage interest). Again, this may be lower than the rates of tax that would be payable by a non-resident individual letting a property in their personal name.

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There may be non-tax advantages to holding a property through a company, albeit the tax implications will usually be a major consideration. For example, holding genuine investment (buy-to-let) properties through a company (whether UK or offshore) can still be advantageous in some cases, particularly as it can provide a mechanism for passing some of the value down to the next generation whilst retaining control through the use of appropriate share structures.

For those who already own a home through a corporate structure, what are the pros and cons of 'de-enveloping'?

For many the decision as to whether they would like to 'de-envelope' is the easy bit – the much harder part is working out how they can 'de-envelope' without triggering significant UK tax charges.

The decision as to whether to 'de-envelope' will normally be driven by whether there are adverse tax consequences if the property is left where it is (such as ATED) without any corresponding tax benefits. If there will be adverse tax consequences if the property is left where it is, most clients will want to extract the property if possible. In contrast, if the position will be broadly the same regardless of whether a property is held in personal ownership or through a company, the decision will then be driven by whether 'de-enveloping' itself triggers any tax charges.

For non-UK resident individuals who already own UK residential properties through offshore companies, it is normally relatively easy to liquidate the structure and extract the property with minimal UK tax charges. However, minimal doesn't necessary mean none and it will be important to consider possible tax charges carefully, particularly CGT and SDLT. There may be some CGT to pay by the company, either on the gain from April 2013 (if the property has been within ATED throughout) or on the gain from April 2015 (if the property is a buy-to-let and therefore the general non-resident CGT charge applies). Further, there could be SDLT if shareholder loans and/or external borrowing are not dealt with carefully.

For UK resident individuals who already own UK residential properties through offshore companies, it is often much harder to extract the properties without significant adverse UK tax charges. The key issue may be CGT – even if the offshore company would only have a minimal CGT exposure on any gain realised under ATED-CGT or general non-resident CGT, a UK resident individual that owns the company may face a much greater exposure on the transfer of the property if the gain is attributed to the individual under section 13 TCGA. If significant CGT is at stake, UK resident individuals may want to wait until there is greater clarity on any possible de-enveloping reliefs, albeit accepting there is no guarantee they will be beneficial and ATED will continue to accrue in the meantime.

Assuming your client wants to 'de-envelope', should they wait or act now? Again, there is no 'one size fits all' answer to this question – if you wait you may benefit from any de-enveloping reliefs provided but ATED will continue to apply (if the property is within ATED) and further gains may accrue, increasing the capital gains tax charge as and when you do proceed. This is yet another reason to start the review process now.

Complexity sometimes presents planning opportunities. Is this the case here?

When it comes to UK residential properties owned for personal use, I'd recommend opting for simplicity over complex planning. The changes introduced over the past few years make the Government's position pretty clear; the UK tax implications of holding through a company are only likely to get worse, particularly as the ATED charges continue to rise. So, rather than looking for more complex planning opportunities, if a property owned for personal use can be extracted with minimal tax consequences I would recommend doing so.

What should practitioners be telling their clients?

Recommend that clients start the review process now. We may not have full details of all the changes yet, and many clients will want to wait and see whether there are any sensible de-enveloping reliefs before deciding how to proceed. However, as there are so many different taxes to consider and the best approach won't always be clear cut, waiting until the last minute isn't a sensible approach, particularly if you are continuing to incur ATED and other tax charges whilst you wait.

Contact

Suzanna Harvey
Partner

+44 (0) 117 902 7757
suzanna.harvey@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

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