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# Investment in High Value UK Residential Property.

Heaven or Hell?

Traps for the wary and unwary!

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- **Heaven is in the past**

- Typical Investment in UK Residential property by a non UK resident could be achieved in a very tax efficient manner.

- UK Inheritance tax (IHT) avoidable.

- UK capital Gains Tax (CGT) on disposal avoidable.

- Related party finance to reduce or eliminate net rental profits.

- A very benign tax regime.

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- **Current position**

- 6th April 2013 the Annual Tax on Enveloped Dwellings (ATED) regime was introduced.
- ATED related capital gains introduced.

- ATED related SDLT introduced.

- 6th April 2015 a new Capital gains tax charge was introduced for all non residents owning UK residential property.

- 6th April 2017 Inheritance tax will be applied to all non residents owning UK residential property.

- **<u>High Value Residential Properties – three heads of charge that apply under ATED.</u>**

- First levy (ATED) Charge came into force 1 April 2013.

- Applies to chargeable persons only.

- Watch out for Partnerships with corporate members and Partnerships of individuals that amount to a collective investment scheme.

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- **<u>Current rates of ATED 2015/16:</u>**

- £500k-1m =£3,500 from 2016/17
- £1-2m = £7,000
- £2-5m = £23,350
- £5-10m = £54,450
- £10-20m = £109,050
- £20m+ = £218,200

- **Common Reliefs:**

- Property development business.

- Property rental business.

- Property trading business.

- Properties run as a business.

Watch out for any use by Ultimate Beneficial Owner.

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- **<u>Second Levy: The new capital gains tax charge on ATED related  gains.</u>**
- -New 28% ATED related CGT charge.
- There must be a relevant high value disposal,
- ATED related Gain,
- Non Excluded Person.
- The new CGT charge is tied in with ATED.
- Same reliefs apply.

- **<u>Third Levy Stamp Duty Land Tax:</u>**

- The highest rate of SDLT applies and is fixed at 15%.

- Less of a deterrent now that top rate of SDLT is 12%.

- Note the ATED reliefs also apply for SDLT.

- Think of these three special levies as the three headed hound from hell – Cerberus.

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- **Example**:

- A company (wherever it is located) is used to purchase high value residential property valued at £20m for use by a non qualifying individual.

- It will pay 15% SDLT on the purchase = £3m,

- It will pay an annual ATED charge of  £218,200,

- 28% ATED related CGT on any gain.

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- <u>**The new CGT charge which applies from 5 April 2015 for non residents who dispose of UK residential property.**</u>

- There will be a rebasing from this date.

- The charge is restricted to UK residential property only.

- The new charge will apply to gains realised by all kinds of non resident person.

- A Non resident CGT return should be filed within 30 days of conveyance.

- Tax is payable within 30 days unless already filing a self assessment return.

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- **New Non Resident CGT Charge Cont.**

- The rate payable by individuals and offshore settlements will be 28%.

- Non resident companies subject to Corporation Tax rate of 20%.

- If the co makes an ATED related gain it pays tax at 28%,

- if the gain escapes ATED it pays tax at 20%.

## Example

- BVI co makes a gain on high value UK residential property.
- Assume that this falls outside ATED related gains, Lettings Relief applies throughout ownership.
- Corporation tax will be applied to the gain at 20%.
- 28% would have been charged if owned by an Individual or Settlement.

# Other Considerations

- Share disposals are again not caught by the new CGT charge.
- The ATED regime will remain intact and take precedence over the new CGT regime.
- Calculations are complex.
- UK anti avoidance provisions have not gone away.

**Order of precedence for non resident companies is as follows:**

-ATED related CGT rules which impose a 28% tax on the gain.

-NRCGT rules which impose a 20% corporation tax charge on the gain.

-Attribution to UK resident shareholders under the UK anti avoidance legislation.

**Order of precedence for non resident trustees is as follows:**

-NRCGT rules which impose a 28% charge on the gain.

-Attribution of gains to UK resident settlors or beneficiaries , taxable at marginal rates.

# Principal Private Residence Exemption (PPRE)

- Rapidly changing CGT landscape.
- If an individual is not UK resident no PPRE unless 90 midnights.
- Time spent by a spouse or civil partner can also be counted.
- Caution will need to be exercised by those seeking to remain non resident and claim PPRE.

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**Non domiciled persons IHT residential property changes announced summer budget 2015.**

- The Government intends to legislate in Finance Bill 2017 with effect from 6 April 2017.
- IHT will become payable on all UK residential property owned by non-domiciles, regardless of their residence status.
- Property will be caught regardless of the type of structure employed.

## UK Residential Property – the individual.

- If a non domiciled individual dies owning UK property -IHT at 40% subject to the usual exemptions.

- Currently if UK property is owned via an offshore company the charge is avoided.

**<u>UK Residential Property – the trust.</u>**

- Deemed domicile - worldwide assets are subject to IHT.
- Excluded Property Trust.
- Example: In the case of UK property if the shares of the offshore co are settled before the non domiciled individual becomes deemed domiciled the settled property will remain excluded property.
- Historically there were no provisions to look through the co and charge IHT on the underlying UK property.

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**Proposal – 6 April 2017**

- The government intends to amend the rules on excluded property.
- The measure will apply to all UK properties.
- The IHT charge will be broadly based on the ATED rules.
- As with non residents CGT, diversely held vehicles that hold UK residential property will not be within the scope of the IHT charge.
- Watch out for lifetime transfers.

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- **Summary of provisions targeted at UK Residential Property investors**

- ATED regime introduced 6 April 2013 and now applies to all UK Residential property worth £500k or more owned through an enveloped structure.

- Think of the three headed hound from Hell Cerberus 1- Annual ATED charge, 2- ATED related CGT & 3- ATED related SDLT.

- Non Residents CGT (NRCGT) charge introduced 6 April 2015 and applies to all non resident persons owning UK residential property.

- The final nail in the coffin is that the IHT advantages of using an offshore structure will be removed from 6 April 2017.

- **<u>Where to next?</u>**
- De-enveloping is likely.
- The consultation is awaited and some form of mitigation may be available.
- Life assurance.
- Deductible Borrowings.
- Diversely held funds.
- Commercial property.

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