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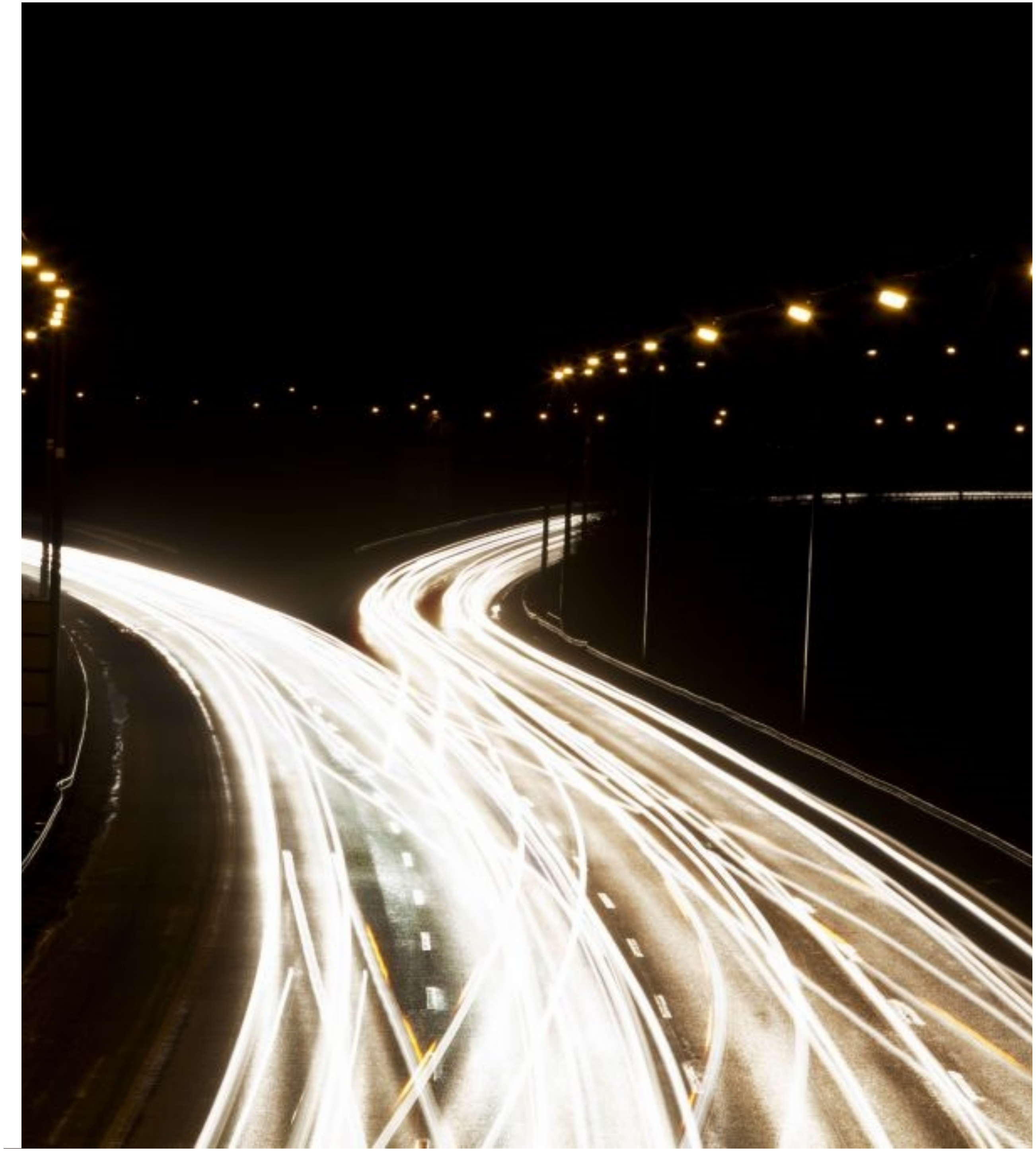
UK Taxation of Real Estate



Kathryn Wintle & Barry Curtis

23 April 2015

Contents

Background

Standard structure for investment into UK property includes either an offshore company, or an offshore trust.

- Advantages:
  - Inheritance Tax Protection
  - Income Tax at the basic rate only
  - Can help to avoid capital gains tax on sale of the property
  - Limited Liability
  - Anonymity

- Practicalities:
  - Non-resident co subject to UK income tax at 20%
  - UK NRL scheme
  - Must join NRL scheme to receive rental income gross
  - Non-resident trusts subject to UK income tax at 20% or 45%

UK NRL Compliance

What is taxable?

- Rent
- Premiums
- Exploitation of land
- Grants

UK NRL Compliance

What is deductible?

- Rent related expenditure
- Non-capital items
- Non-judgemental items

UK NRL Compliance

Common areas requiring specific treatment:

- Valuation fees
- Insurance proceeds
- Dilapidations
- Bad debts
- Premiums
- Repairs & maintenance
- Sums treated as premiums
- Lease negotiation fees
- Legal fees

UK NRL Compliance

Gearing

- Property structures commonly involve high levels of gearing
- Interest deductions on inter-company debt may be reviewed by HMRC
- If gearing is at a level obtainable from a third party, then interest is allowable
- If in doubt, can obtain a transfer pricing review
- Benchmarking?

UK NRL Compliance

Allowances

- Capital allowances:
  - Plant and machinery – 18%
  - Integral features – 8%
  - Annual Investment Allowances
  - Consideration required on sale

- Wear and tear allowance:
  - 10% of gross rental income less tenant charges
  - Applicable to furnished lettings
  - Irreversible

UK NRL Compliance

Other issues

Maintaining non-UK residence:

- management & control

UK resident company:

- UK CT, not UK IT
- Profits from sale of property taxable
- Shares considered to be UK for IHT purposes

Accounts basis:

- Tax year runs to 5 April
- Accounts drawn up to 31 March are accepted
- Accounts drawn up to alternative date are not
- Therefore often need to pro-rate

UK NRL Compliance

Compliance cycle

Return due 31 January following the tax year

Penalty for late submission - £100 (< 3 m)

1st POA due 31 January in the tax year

2nd POA due 31 July after the tax year

Balancing payment due 31 January following the tax year

VAT Considerations

VAT on land and property is a very complex area. Letting of property may constitute a taxable supply for UK VAT purposes.

- If a taxable supply, will create a registration liability
- Taxable supplies:
  - Standard rated
  - Reduced rate
  - Zero rated
- Exempt supplies are not taxable supplies

- Transactions typically high value – therefore high risk

- Consequently, important to understand VAT status when acquiring a commercial property

VAT Considerations

Nature of transactions:

VAT exempt land transactions

- Any supply of land is exempt, unless the option to tax has been made or the legislation provides otherwise
- Includes surrenders, reverse surrenders and other transactions where an interest in land is supplied

No VAT charged, input VAT non-reclaimable

Standard rated land transactions

- Any supply of a property that has been opted to tax
- Supplies of new commercial property (under 3 years old)
- Others including car parking and hotel accommodation

VAT charged (20%), input VAT reclaimable

Zero-rated land transactions

- The first sale of a dwelling
- Services of constructing a relevant residential or charitable building
- Approved alterations to a listed building that is used for residential or non-business charitable purposes

VAT charged (0%), input VAT reclaimable

VAT Considerations

Registration

Tests for registration:

- If supplies exceed £81k over past 12 months, notify HMRC within 30 days of end of month
- If supplies likely to exceed £81k over next 30 days, notify HMRC within 30 days

Practicalities:

- Accounted for on a quarterly, monthly or annual basis
- Applicable method depends on size of business
- Returns and payment due one month after the quarter end (seven day extension if filing electronically)

Stamp Duty Land Tax

Stamp Duty Land Tax ('SDLT') is payable by the purchaser in a land transaction

- Tax is payable when contract has been substantially performed:
  - When purchaser takes possession of property on completion; or
  - If the purchaser effectively takes possession before completion

- Payment due not more than 30 days after transaction

- Applicable rate depends on value and nature of property

SDLT – residential

From 4 December 2014, SDLT charged at (sliding scale):

Property value	Rate
£0- £125,000	0%
£125,000- £250,000	2%
£250,001 – £925,000	5%
£925,001 - £1,500,000	10%
£1,500,001 upwards	12%

- 15% SDLT charged on properties costing > £500,000 purchased by a corporate body.

- Applicable to property rental business, property development and providing admissions.

SDLT – non-residential & mixed use

Non residential and mixed use properties continue to pay SDLT at the following rates (slab system):

Value of property	Rate
£1 - £150,000	0%
£150,001 - £250,000	1%
£250,001 - £500,000	3%
More than £500,000	4%

Annual Tax on Enveloped Dwellings ('ATED')

Introduced from 1 April 2013 as applicable to residential properties worth more than £2 million owned by "non-natural" persons (including companies).

- Tax to be paid based on value of property as at 1 April 2012, or the date which the property was acquired if later
- Valuation of the property to be updated every five years after 1 April 2012
- Reliefs available (return still due) including for commercial letting and property development

- ATED return and payment due by 30 April at the beginning of each ATED period

- 28% CGT also payable on gains realised on disposal of the property (based on increase in value since 5 April 2013)

- Also applicable to properties over £1m from 1 April 2015 and over £500,000 from 1 April 2016

ATED

ATED amounts due as follows:

Value	ATED (per annum)
£500,000 - £1,000,000 (From 1 April 2016)	£3,500
£1,000,001 - £2,000,000 (From 1 April 2015)	£7,000
£2,000,001 - £5,000,000	£15,400
£5,000,001 - £10,000,000	£35,900
£10,000,001 - £20,000,000	£71,850
Over £20 million	£143,750

- Where a property enters or leaves the regime the charge will be pro-rated or partially repaid

- Charges will be increased in line with inflation (CPI)

ATED

Relief from ATED and capital gains arising on ATED properties available, including to the following:

- Property rental businesses
- Property developers
- Property traders
- Farmhouses
- Properties open to the public

Capital Gains Tax on UK residential property

From 6 April 2015 Capital Gains Tax ('CGT') has been extended to non-UK residents who dispose of UK residential property.

- Calculated on increase in value from 5 April 2015
- Not applicable to sale of shares or units in a fund
- Applicable to close companies only
- Non-resident companies charged at 20%
- ATED charge will take precedence (28%)
- Notification required within 30 days
- Collected as part of existing process, or within 30 days

Diverted Profits Tax ('DPT')

As part of the 2014 Autumn Statement the UK Government announced that it would introduce a new Diverted Profits Tax, that would apply to profits of multinationals artificially diverted from the UK.

- Applies to profits accruing from 1 April 2015 at the rate of 25%
- Will apply in two distinct situations:
  - Where a foreign company has artificially avoided having a UK taxable presence (PE), and / or
  - Where a group has a UK company or PE which has transacted with a connected low-taxed entity that lacks economic substance.
- In both cases, there must be activity (people) in the UK.
- Certain exemptions available.

- Considered by the UK Government to fall outside the scope of existing double tax treaties

- Linked to the BEPS project as is designed to reflect expected outcomes released as part of this work.

- Final legislation and guidance produced in March 2015

Contact details

Kathryn Wintle
Senior Manager
01534 824336
kwintle@deloitte.co.uk

Barry Curtis
Manager
01534 824212
bacurtis@deloitte.co.uk

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Deloitte LLP is a limited liability partnership registered in England and Wales with registered number OC303675 and its registered office at 2 New Street Square, London EC4A 3BZ, United Kingdom. Tel: +44 (0) 20 7936 3000 Fax: +44 (0) 20 7583 1198.