

MILESTONE

REBASING OF OFFSHORE PROPERTY PORTFOLIOS PRIOR TO APRIL 2013

Issue

- Non-resident non-natural persons (e.g. foreign companies) will potentially be subject to capital gains tax on sales of UK residential property under legislation proposed to have effect from April 2013.
- The proposed gain will apply to the total gain accruing throughout the period of ownership (and not just the gain accruing after April 2013).
- The likely rate is 28%.
- This is a significant tax cost to historic portfolio holding structures that are pregnant with latent gain.
- Non-natural persons (e.g. UK and foreign companies) will potentially be subject to an annual charge in respect of UK residential property valued at over £2m held by any company under legislation proposed to have effect from April 2013.

Solution

- Prior to April 2013, the foreign company sells the property to a suitable offshore structure ("CT") at current market value under a rescindable contract.
- The completion date of the contract would be 31 March 2018 or such other date as the parties may agree.
- The acquirer has the sole right to rescind the contract prior to completion.

Benefits

- Property rebased to current market value without triggering an immediate charge to CGT or SDLT.
- Property structures not therefore forced into disposal between now and April 2013.
- No requirement to re-negotiate existing bank lending since the property is not immediately transferred.

Capital Gains Tax Consequences

- The date of the foreign company's disposal will be deemed to be March 2013, even if the contract is not completed until some years hence.
- Pre-April 2013 latent gains are "washed" out of the structure, CT's base cost being the current market value; and
- CT will likely be subject to CGT on any increase in value post April 2013.

Stamp Duty Land Tax

- It should be possible to avoid a double-charge to SDLT under the sub-sale rules.

Annual Charge

- It may be possible to argue that CT (rather than the foreign company) is the beneficial owner of the property as of the date the pre-April 2013 contract is entered into and that the annual charge should not be payable.

Inheritance Tax

- There is no transfer of value on entering into the sale agreement on the basis this is at market value.

Please note that this note does not constitute tax advice and cannot be relied upon as such. No responsibility can be accepted by Milestone for action taken as a result of information provided or opinions expressed in this note. Readers are strongly recommended to take advice on their particular situations.

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