

ABDULLAH CHAN

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Current Challenges of Investing in London Properties

Stamp Duty Land Tax ("SDLT")

What is this? SDLT is a tax that is due and payable when purchasing a property in England and Wales.

Do you know that following the UK Government's Budget announcement on 16 March 2016, if you are purchasing a residential property in the UK on or after 01 April 2016, and if you already own another property (anywhere in the world), you may be required to pay an additional 3% surcharge on the SDLT charge? So effective from 01 April 2016, a higher rate of SDLT (the thresholds for residential properties now vary from 0% (for transactions below £40,000) to 15%, depending on the property purchase price) is payable on such purchases of additional residential properties above £40,000. The highest 15% rate will be applicable for residential properties costing more than £500,000 purchased by corporate bodies (or "non-natural" persons) such as companies, partnerships, collective investment schemes and also for individuals purchasing a property worth more than £1.5 Million.

Capital Gains Tax ("CGT")

What is this? CGT is a tax applicable to individuals, trusts and businesses which is charged on the profit when an asset (e.g. property or shares) is sold or disposed of. Disposing of an asset includes selling it, giving it away as a gift, transferring it to someone, swapping it for something else or getting compensation for it.

Do you know that non-UK residents were previously not subject to CGT, but that from 06 April 2015, non-UK resident individuals must pay UK CGT on gains arising from the sale or disposal of UK residential property? For higher rate taxpayers, CGT rates are now 28% on gains from residential property, and 20% on gains from other chargeable assets. However, depending on the assets, a gain can be reduced by applying losses, expenses and certain reliefs. You may also benefit from an annual tax free allowance of £11,100 for the 2016 / 2017 tax year, and there are also certain reliefs

available (e.g. gifts between spouses are generally exempt. The position can however be different for couples who have separated).

The non-resident CGT also applies to non-resident companies (if closely held - i.e. under the control of 5 or fewer participators) which own property in the United Kingdom. The rate of CGT is 20% in this case.

Please note that there is a special regime for gains arising from the disposal by non-resident companies of residential property subject to the Annual Tax on Enveloped Dwellings ("ATED"), i.e. residential properties over £1 Million for 2015/2016 and over £500,000 from April 2016. This special regime applies to non-natural persons holding residential property in the UK on or after 06 April 2013. This charge marks a departure from the long-standing position that companies are subject only to corporation tax on chargeable gains, and are not subject to CGT. The aforesaid ATED related CGT charge applies to any ATED-related gains made on "relevant high-value disposals" by "non-natural persons" of UK residential properties. Non-natural persons for these purposes have the same meaning as under the ATED rules, which means that the ATED-related CGT charge applies to both UK resident and non-UK resident companies and other non-natural persons.

ATED-related gains may arise if on or after 06 April 2013, there has been a disposal of a UK residential property valued more than the ATED-related CGT thresholds and, whilst one owned it, either of the following applied:

- The property was subject to ATED for any period on or after 06 April 2013.
- One has elected to treat it as subject to ATED for any period before 6 April 2013.
- The ATED-related CGT property value thresholds are:
 - From 06 April 2013 over £2 Million.
 - From 06 April 2015 over £1 Million.
 - From 06 April 2016 over £500,000.

Capital gains are ATED-related (and taxed at 28%) if the property disposed of has been subject to ATED. If the property was subject to ATED for only part of the period of ownership, both an ATED-related gain and a gain that is not ATED-related will arise on disposal. Gains that are not subject to CGT because they are not ATED-related will be subject to the 20% CGT on chargeable gains.

UK Inheritance Tax ("IHT")

What is this? IHT is a tax at a rate of 40% which is principally charged on an individual's estate on death, but it may also be payable on certain gifts and trusts.

Do you know that if you own a residential property or any other assets which are situated in the UK, then even though you are a non-UK domiciled person, IHT will be payable on the value of your UK estate over £325,000 (the 'nil band rate') after your demise? Also, if you, a non-UK domiciled person,

are a beneficial owner of a property held through a non-resident / offshore company, from April 2017 there may be an IHT liability to pay if you pass away or make a lifetime gift relating to your UK estate.

Gifts to spouses (during your lifetime or by way of inheritance) are generally exempt though and any part of an unused nil rate band can be transferred to a surviving spouse. Also, outright gifts may be potentially IHT exempt if you survive for 7 years after gifting it away. The 40% rate may be reduced to 36%, if 10% or more of the estate is left to charity, by way of a gift included in your UK will.

Declaration of Trust / Deed of Trust ("DOT")

What is this? A DOT is a sensible document to have if you are buying a property jointly with someone else or if you already own a property and you wish to formalise the co-ownership arrangements. It is entered into by persons who have a beneficial interest in the property, and a copy will be registered with the Land Registry.

Do you know that for both freehold and leasehold titles for property in England and Wales, only up to four individual names can be included on the title? The DOT is helpful as more than 4 persons may be parties to the same, it can clearly state how the beneficial ownership in the property is divided and also define how liabilities are to be paid, how rental income is to be divided and shared, and can protect the initial deposit amounts paid to buy the property. The DOT can also be expanded to state how any increase in value will be divided on the sale of the property, who will be responsible for paying the maintenance costs, and also any agreement if one co-owner wishes to sell his/her share in the property. A DOT which clearly sets out the ownership provisions in respect of a property may assist with ensuring that tax liabilities (such as income tax, IHT and CGT) are proportioned in a tax efficient manner.

Extension of Leasehold Period

Leery of buying that nice apartment you've seen in Chelsea because of its short 26 year lease?

Do you know that landlords of leasehold properties in England and Wales are obliged, under the Leasehold Reform, Housing and Urban Development Act 1993 (as amended) ("1993 Act"), to extend the lease for an additional 90 years at a peppercorn (i.e. nil ground rent) if you request for such an extension? The lessee (i.e. owner) must own the property for at least 2 years in order to qualify for a lease extension, but this right is assignable to a buyer so you may not have to wait for the 2 year period. The advantage of this is that the valuation date is fixed upon service of a notice requesting a lease extension, in spite of the length of time it will take to complete the claim. The 1993 Act also lays down a formula for establishing the premium payable for extending the lease, and you can instruct a specialist Leasehold Reform valuer to carry out a valuation and handle negotiations with the landlord's valuer. In the event the landlord and you are unable to agree on the premium to be paid for such extension, then you could refer the matter to the London Residential Property First-tier

Tribunal (Property Chamber) who will then determine what such premium should be, and such decision will be binding on the parties. If you do not consider the Tribunal's determination to be fair, then you can apply to appeal the decision to the Upper Tribunal (Lands Chamber). It therefore makes sense, yes, for you to not shy away from such properties? There could be great deals to be had.

Food for thought. Do get in touch with us if you should require assistance with structuring and planning your UK holdings or estate.

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