

WinckworthSherwood

Do I Still Need My Property Holding Company?

There has been a plethora of changes affecting companies which own UK real estate. This briefing note summarises the key changes and will be a useful starting point for individuals reviewing the efficacy of their existing structures.

Annual Tax on Enveloped Dwellings (“ATED”)

ATED was introduced in 2013. Its main purpose is to make holding high-value residential property in the UK through companies (so-called “enveloping”) unattractive.

ATED is payable annually. A return needs to be completed if the property is a dwelling in the UK, is valued at more than £500,000, and is owned completely or partly by a:

- a) Company;
- b) Partnership where any of the partners is a company; or
- c) Collective investment scheme - for example a unit trust or an open-ended investment vehicle

The chargeable amount will depend on the valuation of the property (please see table of current charges below).

Property value	Annual Charge
More than £500,000 up to £1 million	£3,650
More than £1 million up to £2 million	£7,400
More than £2 million up to £5 million	£24,800
More than £5 million up to £10 million	£57,900
More than £10 million up to £20 million	£116,100
More than £20 million	£232,350

Certain reliefs and exemptions are available, including for where the property is let to a third party (not someone who is connected to the owner) on a commercial basis. Where a relief is relied on, a return must still be filed.

The previous inheritance tax exemption

Prior to April 2017, if a non-domiciled individual held UK residential property via an offshore company then the ownership of those shares would not fall into their UK estate for inheritance tax purposes so long as they were still non-UK domiciled on their death. This valuable benefit of protecting up to 40% of the value of the property being taxed on death was removed in 2017. Now, the value of the shares of the property holdco will be included in the individual’s estate on death for inheritance tax purposes. As a general rule, the value of the estate above £325,000 would be taxed at 40% on death. Furthermore, loans from individuals/related structures used to purchase, maintain or enhance UK residential property are also now within the scope of UK inheritance tax.

Non-resident capital gains tax (“NRCGT”)

Following the Finance Act 2019, there is potentially a more favourable tax regime now in which to ‘de-envelope’ your residential property, in order to own it personally and escape ATED charges going forward.

ATED-related capital gains tax ("CGT") has been repealed. Non-resident individuals are subject to CGT and non-resident companies are subject to corporation tax on residential property gains. The current rates are as follows:

Individuals (CGT):

- a) Basic rate (up to £31,865) on residential property: 18%
- b) Higher rate (up to £31,866) on residential property: 28%

A non-resident individual selling shares in a company benefits from a new base cost of April 2015. This means there would only be CGT to pay if the property had increased in value since that date (minus any deductible costs). Where it would be better to use the actual (pre-April 2015) acquisition cost of the property, that is also permitted.

Companies (corporate tax rate): 19%

In addition to the low corporate tax rate on any residential property gains, the company benefits from an indexation allowance up to 31 December 2017, which can further reduce any chargeable gain. The purpose of the allowance is to eliminate the effect of inflation in the chargeable gains calculation.

Companies will also (from April 2020) pay corporate tax on rental income, which is an attractive rate when compared to personal income tax rates (ranging from 20% to 45%).

Overseas Entities Register

The confidentiality of using a property holdco may be seen as one of the remaining benefits as the company name appears on the land registry rather than the individual beneficial owner. However, it should be kept in mind that on the horizon is the proposed Overseas Entities Register, which will result in the beneficial ownership of some property holding companies being publicly published and free to access on UK Companies House. This new register will introduce significantly more onerous filing requirements for non-UK entities owning interests in both commercial and residential UK property resulting in greater compliance and administration costs. It is intended that the register will become effective in 2021.

Whether to keep or wind up the structure

The benefits of holding residential property via offshore structures have been significantly eroded over the last 6 years through the introduction of ATED, CGT for non-residents and the removal of the inheritance tax exemption for non-UK domiciled individuals.

Aside from when the property is commercially let to a third party, in many cases it will be difficult to justify the cost of maintaining a company for holding UK residential property only. As we currently have a more attractive tax regime for individuals considering de-enveloping their property, now is a good time to review existing structures. Additional taxes may apply if there is a mortgage on the property, and so as with any restructuring, it is important that UK legal advice is obtained.

Now that foreign owners of residential property will be subject to inheritance tax rules, it is important to consider inheritance tax planning at the same time as 'de-enveloping'. In many cases it will also be advisable to have a UK will in relation to UK property interests.

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