

INSIGHTS

The implications of
the recent UK tax
changes for non-UK
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Wayne Stanley, Director,
Standard Chartered Bank Priority Jersey

In November 2017, the Chancellor of the Exchequer’s budget to Parliament put forward the case for changes to the taxation of gains made by non-residents from UK commercial property in order to “more closely align the tax treatment of non-UK resident owners of UK immovable property with that of the UK residents, and reduce the incentive for multinational groups to hold UK property through offshore structures, often in low tax or no tax jurisdictions”.

As of April 2019 onwards, disposals of all UK commercial and residential property directly held by non-UK residents are subject to UK tax.

The UK property market has seen its share of change over the past few years, from George Osborne’s (the then Chancellor of the Exchequer) 2014 implementation of a more progressive Stamp Duty tax, 2015’s Diverted Profits Tax and the Non-Residential Capital Gains Tax, 2016’s further Stamp Duty Land Tax changes and the initial Brexit panic, and, coming into force in 2017, the BEPS legislation (Base Erosion and Profit Shifting). When combined with legal structuring considerations for the purpose of legacy planning (Inheritance Tax considerations), VAT, Corporation Tax and residency considerations for those wishing to invest into the UK, the property investment landscape is not just complicated, it’s also forever moving.

There is a great volume of technical information out there for those so inclined to revert to source for the finer points of the tax changes, however it is worth noting that the exact April 2019 legislation has yet to be fully defined. Instead of burdening our readers with technical uncertainties, we have

sought the opinion of Penny Wotton, Partner and Head of Private Client at Fieldfisher (one of the institutions on Standard Chartered Bank Priority Jersey’s legal panel), on what the main implications are for our clients.

What this means for UK property holders

“It is surprising how only a minority of wealthy non-doms seek professional advice on the structuring of their prospective holdings before making a purchase”, an initial sentiment voiced by Penny Wotton.

Seek legal counsel before any purchasing decisions are made. The advice couldn’t be any clearer from Penny. The cost of unwinding poorly considered structures greatly outweigh that of seeking professional guidance in order to get it right first time. The other advice is to keep it as simple as possible. Investors need to be as clear as possible with regards to their investment objectives, and stay true to these goals. Penny also points our attention to a few essential aspects to consider:

- **Whether to purchase directly or to use a corporate structure.** The tax changes have varying implications depending on the vessel used to purchase UK property. Pros and cons exist for either means of purchasing but, again, the choice of structure utilised should very much depend on your investment objectives.
- **Think of legacy planning in the upfront.** Lifetime gifts (gifting your assets post purchase, over time) can work in some examples, however this is not ideal with regards to most efficient tax planning and it can be complicated. Purchasing for a spouse (or other) would be the most tax efficient option, followed by co-ownership, however it is understandable that personal circumstances might not always allow for such an approach.

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- **Insurance.** A little extra expenditure can better mitigate potential future surprises in whatever shape or form they may come.
- **Loans.** Borrowing can provide for good tax planning solutions if properly structured. One extremely important consideration however, is that personal loans should not be secured against foreign assets, as the value of these foreign assets may then be exposed to UK inheritance tax. It is therefore crucial that a discerning, flexible and client-centric bank is engaged alongside skilled legal advice during the early stages of a purchasing decision.

What this means for existing UK property holders

Existing property holders should seek advice on the structuring of their current holdings and remember to formally review their existing residency structures. Penny Wotton describes one such example whereby whilst de-developing (unpicking) a no-longer-tax-efficient offshore structure, it had become apparent that, due to the length of time that this particular client had spent in the UK, he now qualified as a UK resident for UK tax purposes. Not only did this mean that he was liable for Income Tax, but this also meant that, through transfer of assets, he was also liable through anti tax-avoidance legislation.

Although, the cost of reviewing and restructuring for most efficient tax planning may be dissuasively high, the cost of not doing so could be considerably higher.

What this means for the wider market

Many media outlets have suggested that the changes to the regime have the potential to further reduce investment into the UK property market from overseas investors,

investment that is already conservative due to the long list of appetite suppressants listed at the beginning of this article (Brexit and complex tax considerations). According to Penny Wotton however, interest from her client base has neither been stemmed nor stalled, with investors simply seeking counsel on the most effective structuring of their existing and potential future property purchases; a much needed nudge perhaps for investors to properly entertain such considerations in the upfront.

On a positive note, Penny also suggests that there is not much more to be done in order to modernise the UK property tax environment, with the UK landscape actually being more favourable than many international investors' home jurisdictions. For some international investors however, a 'wait and see' approach may still be the position of comfort, although it is difficult to ignore the market opportunity of buying at, what appears to be, a steady bottom to the market.



The take homes

Whether you are a current investor in the UK market or thinking about exploring the potential opportunity, what can certainly be advocated is the need to seek proper professional guidance on the structuring of the purchase as well as all relevant tax and legacy planning considerations. This does then also require flexibility from your chosen mortgage provider, whereby each application needs to be reviewed on a case-by-case basis and solutions provided to fit to the client's given needs as well as the structuring and tax advice. An example here, in the context of legacy planning, being the ability to provide a mortgage to the purchaser who may chose to have said property registered to their son or daughter.

Given the complex and forever changing tax landscape and the costs and risks associated with poorly-considered or overly-complicated structuring, or simply just 'getting it wrong', only once professional legal advice is obtained and a flexible mortgage provider sourced, should the more exciting considerations, such as where and what to buy, be entertained.

Biography

Wayne Stanley, a Director at Standard Chartered Bank Priority Jersey, has a 20-year career in wealth management with experience across a broad range of disciplines including investment advice and management, private banking, fiduciary services, insurance and private equity real estate.

Biography

Penny Wotton heads the Private Client team at Fieldfisher. She has advised a diverse range of private clients for over 30 years including royalty and ultra-high net worth individuals. Penny has expertise in UK and non-UK resident trusts and international estate planning and structuring.



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