Property Taxes in perspective

Tax voice



31 January 2018

Brian Slater, Chair of the Property taxes sub-committee, provides a round-up of Property Tax developments in 2017

Unbelievably, we are now firmly into 2018. Knowing that I would have to write this comment piece at about this time of the year; I was racking my brain for inspiration. Nothing much had been happening in the property tax world for a while (after a hectic year or so) so what to write about? Happily, the Chancellor of the Exchequer came to my rescue in the November Budget with not one but two major changes to property taxes.

The first change concerns Stamp Duty Land Tax (SDLT). There has been change of some sort or another in every single year of the fourteen-year existence of SDLT and 2017 was to be no exception. A new relief was introduced for first time buyers of residential properties. Basically, the relief from SDLT works for first-time buyers of a single residential property acquired for a purchase price of up to £500,000. The buyer (or each of the buyers) must be a first-time buyer who intends to occupy the purchased property as their only or main residence. The amount of SDLT chargeable on the consideration up to and including £300,000 is 0% with 5% on the remainder. A first-time buyer making a purchase over £500,000 will be taxed at the standard SDLT rates on the whole of the purchase price payable (i.e. no partial relief will be available). The relief is stated to be part of the Government's commitment to support home ownership and to help first time buyers to acquire their first homes.

All very laudable, but wait, have we not been here before? The measure is framed in broadly similar terms to the temporary relief introduced by Finance Act 2010 for purchases between 25 March 2010 and 25 March 2012, but the new relief is a permanent measure (although with Parliament being sovereign, change is just an announcement away). In relation to the earlier temporary relief, a research report from HMRC, published in November 2011, evaluated the introduction of the temporary SDLT relief. The evaluation concluded that the policy had little effect on improving the affordability of homes, with first-time buyer transactions ‘around 0-2 per cent higher than they would have been in the absence of the relief’. It also suggested that ‘that the majority of the 1 per cent tax relief was capitalised in higher prices’.

Both Scotland and Wales have responded to this change. There is now a relief for Land and Buildings Transaction Tax (LBTT) for first-time buyers in Scotland of properties up to £175,000. Land Transaction Tax (LTT) will be introduced in Wales from 1 April 2018 and the proposal is that from that date the **nil-rate band** will be £180,000 – this will be made available to **everyone** who is buying a home in this part of the market. This new threshold is £55,000 higher than the starting threshold for stamp duty land tax and will, it is estimated, reduce the tax burden for around 24,000 homebuyers – including first-time buyers – in Wales.

As regards SDLT and LBTT, the reduction in the up-front costs, as a result of this permanent measure, will be realised only to the extent that house prices in the market do not rise to reflect the existence of the relief. Although it is acknowledged that a permanent relief may have a different behavioural impact than a temporary

reprieve (assuming no change in government), the tension between the evaluation of the earlier measure and the current one does underline the need for reliefs of this nature to be properly considered, consulted on and evaluated.

The second change concerns the extension of Capital Gains Tax (CGT) to commercial properties owned by UK non-residents. This has been inevitable since ATED Related CGT on residential properties caused the first crack in the then 48-year-old principle that UK non-residents are not liable to CGT on non-trading assets. The crack was widened in 2015 with the extension of CGT to all residential properties owned by UK non-residents and from April 2019 will be widened to encompass all UK situated immoveable properties.

However, the proposed new taxing regime will be much more ambitious than either the ATED related CGT scheme or the 2015 general CGT scheme for residential property owned by UK non-residents. This is because it applies not just to gains arising from the direct disposal of properties but also to gains arising on indirect disposals, i.e. the disposal of shares in "property rich" entities. For this purpose, it is proposed that a "property rich" entity will be one the gross assets of which include at least 75% UK immoveable property. It is important to note that gross assets only will be included in this calculation. No regard will be made to liabilities.

HMRC are currently conducting a consultation exercise, which closes on 16 February 2018. This is an extremely important consultation and you are encouraged to read the consultation document produced by HMRC and to comment accordingly. One of the proposals (paragraph 7.12 of the consultative document) places a responsibility on certain advisers and agents to make disclosures of disposals which might be caught by the proposed new CGT regime!

Representatives of the Property Taxes Sub-Committee met recently with some members of the HMRC team steering through the consultation, which helped to clarify certain aspects of the proposals, from both sides. Perhaps there is an element of over-estimation on the part of HMRC as to the level of knowledge concerning UK taxation held by non-residents owning UK property (see *McGreevy* [2017] TC 06109) and the treatment of overseas property investment funds has yet to be finalised. Apparently, it is proposed that all the CGT regimes for properties owned by UK non-residents, both residential and commercial, are rolled into one regime. This should reduce complexity.

One interesting aspect is that the new CGT regime is due to commence in April 2019 (and the CGT base costs of commercial properties will be rebased as of April 2019) but there is a separate proposal for all UK non-resident companies owning UK immoveable property to be brought within the corporation tax regime from April 2020. It appears that the new regime will be within CGT for one year and then corporation tax.

If you have any comments on the proposals please respond to the consultation by 16 February 2018.

I wish all readers a very happy and prosperous 2018.