Removing the tax barriers to de-enveloping residential property

Inheritance Tax and trusts | OMB

01 August 2016

The professional bodies point to the advantages of removing the barriers to de-enveloping residential property

With the support of the ICAEW, the Stamp Taxes Practitioners Group, STEP, and the Law Society, the CIOT has made a detailed submission to HMRC and the Treasury on the advantages of removing or mitigating the barriers to de-enveloping residential property. It follows the proposals outlined at the 2015 summer Budget for new inheritance tax rules on UK residential property held indirectly by non-UK domiciliaries.

On 8 July 2015 HMRC published a note providing further detail of the proposals, outlined at the 2015 summer Budget, to bring all indirectly held UK residential property into the charge to IHT from April 2017. The note states that the proposals will change the IHT treatment, so some non-doms and trusts may wish to remove the envelope and move into a simpler more straightforward structure outside the scope of future ATED charges, ATED reporting or ATED-related CGT. If the property is mortgaged or has increased in value since 2013 there may, however, be significant costs in de-enveloping. The government indicates that it will consider the costs associated with de-enveloping and any other concerns stakeholders may have during the consultation on de-enveloping.

The submission points to two ways in which such costs could be mitigated, but focuses on the second.

1. The preferred solution is a statutory relief from the CGT and, if the property is mortgaged, from SDLT (potentially with a sunset clause); it is hoped that this solution will be considered as part of the consultation on the IHT proposals.

2. A clearance facility for SDLT, again time limited, and dealing with the particular uncertainties that arise in relation to the potential application of FA 2003, s 75A-C and Sch 4, para 8(1A) when there has been third party debt secured on the property.

The second option offers a pragmatic, short-term solution to the significant uncertainty that arises in de-enveloping in the absence of a statutory relief. Although there is an obvious resourcing cost for HMRC in offering this (albeit one that can be limited by the period and terms on which it is offered), the submission points to the substantial benefits in doing so:

- Facilitating enforcement and collection of taxes, in particular IHT.
- Furthering government policy to the extent that it is a policy objective to encourage direct ownership, thereby removing the potential for perceived SDLT avoidance in the sale of shares in existing structures. Although HMRC-commissioned research indicates a reduction in the number of high-value residential properties being transferred into corporate or other entities, the de-enveloping of existing structures is hampered by the costs and uncertainties of doing so. It appears that a core policy aim may be in danger of being compromised by the existing barriers to de-enveloping.
- Removal of uncertainty in relation to the application of FA 2003, s 75A-C and Sch 4 para 8(1A) when a property is transferred into direct ownership and debt has been secured on the property. The uncertainty acts as a significant barrier to de-enveloping.

The submission includes some common situations that occur in practice to provide an indication of the nature and extent of that uncertainty and therefore the likely scope of such clearances. The submission points to the need for a specific clearance mechanism to give certainty in individual cases. However, it would be helpful if HMRC's guidance could be updated in light of the Court of Appeal's judgment in *Project Blue Limited v HMRC* [2016] EWCA Civ 485 setting out HMRC's view on all the common scenarios in the appendix.

Read the full text of the CIOT submission on the CIOT website.