UK Companies – Check you do not become liable for the Annual Residential Property Tax which will come into effect on 1st April 2013

An outline of the Proposed Annual Residential Property Tax (ARPT) was given in the last Property Law Bulletin. This Bulletin looks at the proposed new tax in more detail.

There is a consultation draft which contains the proposed clauses.

The ARPT is to be an annual tax chargeable with regard to single dwellings which have a value greater than £2m.

If the value is greater than £2m but not greater than £5m, the charge is £15,000 per annum and there is a scale charge for higher value properties.

A UK company can be liable to this charge but only if it has a beneficial interest in the single dwelling. Thus if a company holds the property as a nominee, say, for an individual, this charge is not relevant.

Partnerships are not within this charge provided there are no corporate members of the partnership.

The charge only applies if a company is beneficially entitled to the chargeable interest in the single dwelling house. Chargeable interest means an estate, interest , right or power in or over land in the United Kingdom for the benefit of an obligation, restriction or condition affecting the value of any such estate, interest, right or power. However, an exempt interest is not a chargeable interest and a licence to use or occupy land is an exempt interest. Thus a company can have a very valuable licence to occupy land and it would not have a chargeable interest. A licence would have to be a licence properly so called.

If the company does have any sort of chargeable interest in the land, it appears that the effect of the anti-avoidance provision in clause 12 of the consultant draft is that one adds in the other chargeable interests held by connected persons to determine whether the £2m threshold is reached. Thus if the company holds a chargeable interest such as a leasehold interest in the single dwelling interest and elected persons own the freehold worth £2m, then the company would be caught by the ARPT. These provisions only apply to a dwelling but clause 13 of the consultation draft states a building or part a building counts as a dwelling at any time when it is used or is suitable for use as a single dwelling. Thus if an individual owns a dwelling as tenants in common with his family trading company which uses half for its trading purposes, eg storage or display, then the ARPT may be applicable.

There are a number of heads as mentioned in the last Property Law Bulletin which leaves certain dwellings from the ARPT but they would not be applicable to situations such as that. It is extraordinary that this charge should apply to a dwelling house which is used for commercial

purposes. That however seems to be the case because the test is whether the areas would be suitable for use as part of a single dwelling.

Maybe the Archilles heel in the new provision is the fact that it does not apply to a licence. Thus if the company owns the freehold of the property it may be able to carve out for itself a licence properly so called of some value and sell the freehold subject to that licence. Depending on the circumstances, the sale may not give rise to too greater charge to corporation tax on chargeable gains. The pernicious nature of this new charge has caused it to be nick-named the "HARPT" ie the Horrible Annual Residential Property Tax!

PATRICK C SOARES

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