



KPMG in the Channel Islands

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Offshore property development changes

The 2016 Finance Bill included an unexpected, although not altogether surprising, focus on the taxation of offshore property development companies trading or developing UK property. The announcements represent a significant change in the way activities undertaken by Guernsey companies involved in property development will suffer tax in the UK.

The island handshake

It had been anticipated for some time that the so called “island handshake” would be removed, and it was expected that the reworking of the Double Taxation Arrangement Guernsey has in place with the UK would see the definition of a permanent establishment expanded to include a building site.

The relevant clauses in the Finance Bill remove the current territorial restriction in UK legislation, so that the profits of a trade carried on by a company are subject to UK tax on profits where a company’s trade comprises of dealing in UK land, regardless of the company’s residence, where the trade is carried on and whether or not a UK permanent establishment exists.

The aim of these measures is to ensure that non-resident developers of UK property will always pay UK tax on the profits from that development. The legislation puts in place a specific set of rules to tax trading profits derived from land in the UK. Those rules will apply equally to resident and non-resident businesses, and will not depend on the existence of a permanent establishment in the UK.

The legislation will be introduced at Report Stage (anticipated June 2016) and will take effect from the date of introduction. However, anti-avoidance rules have been in effect since Budget Day (March 16th 2016) to counteract any arrangements put in place between Budget Day and the date the new legislation is introduced that are designed to avoid the charge.

Targeted Anti-Avoidance (TAAR)

Whilst the legislation will not come into play until report stage (June 2016), the TAAR is introduced with immediate effect.

If land is transferred to a related party not intended to be the ultimate recipient for the purposes of rebasing the land value, then the TAAR will apply, irrespective of whether tax avoidance was the motivation.



The TAAR also specifically addresses fragmentation and disguised trading in land via enveloping. In both cases the new rules will deem the whole of the associated profit which relates to trading or developing UK land to fall under the charge to UK tax. The TAAR also applies in any case where arrangements are entered into and the main purpose, or one of the main purposes, is to ensure that profits are not brought into charge under the new proposals.

Summary

Guernsey companies have for a number of years been used legitimately to take advantage of the benefits within the Double Taxation Arrangement with the UK to reduce the UK taxation on UK property development undertaken by non-UK resident persons.

These proposals will therefore have an impact on the tax position of these companies, although it must be stressed that the intention is merely to place non-UK developers of UK property in the same position as UK developers.

Whilst one advantage has been removed, it still remains that Guernsey has several decades of experience of dealing in property transactions and many of the benefits of utilising a vehicle for investment property holding still remain.

The significance of why a company is developing a property be it for trading or investment purposes has never been more evident and reviewing that position now is of great importance.

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