

# CAPITAL TAXES & OFFSHORE ISSUES 2

## KEY POINTS

### Stamp Duty Land Tax

The Government has announced exemptions from the 15% SDLT rate announced last year for companies buying residential property for more than £2 million to apply from Royal Assent.

### Stamp Duty

With effect from 6 April 2014, it is proposed that stamp duty on shares traded in growth markets such as AIM will be abolished.

### Capital Gains Tax (companies)

Capital Gains Tax at 28% will be payable by all companies (UK and offshore) selling residential property which has been subject to the ATED. The tax will be payable on the increase in value from 5 April 2013, although UK companies will also have to pay corporation tax on the growth in value up to 5 April 2013.

### Offshore Companies (Anti-Avoidance)

The Government has proposed changes to anti-avoidance legislation relating to income and capital gains of offshore companies owned by UK residents. This is retrospective to 6 April 2012.

With effect from 6 April 2013 legislation attributing gains to UK resident "contributors" to offshore companies will be relaxed. The minimum threshold for effective interest at which the legislation applies will increase from 10% to 25%.

### Residence

The Statutory Residence Test announced in the 2011 Budget comes into effect from 6 April 2013. It has also been confirmed that this test can be applied to earlier years when trying to assess residency status for years from 6 April 2013.

### Overseas Workday Relief

As a result of the Statutory Residence Test, Overseas Workday Relief (OWR) now applies to non-domiciled individuals arriving in the UK for the first three tax years.

## OUR THOUGHTS

In line with the exemptions for the ATED, the 15% rate will be reduced to 7% where the property is to be used in, for example, a commercial rental or property development business, with a claw back if there is a change of circumstances within 3 years of purchase. The focus of the 15% rate is therefore very much on IHT and SDLT avoidance by individuals rather than the use of companies by property investors/developers.

Designed to encourage trading and investment in growth companies, we are sure that this will be welcomed by the companies and investors affected.

Originally intended only for offshore companies, consultation led to an extension to UK companies, presumably to prevent legal action taking place in EU courts, as has happened on other legislation. The changes are clearly designed to discourage tax planning by individuals and minimise disruption to bona fide businesses. Offshore companies may still be caught for the pre 6 April 2013 gains under anti-avoidance legislation where a UK resident is involved.

As a result of certain EU judgements, the UK Government has been forced to modify certain anti-avoidance legislation. In consequence, it is proposed that the anti-avoidance rules will not apply if the company has a business presence of some substance in the other country, rather than, say, just passive investments. Thankfully this now means that many genuine businesses will no longer be caught by this legislation therefore reducing the tax burden of affected individuals.

The question of residency is very important in taxation, and this new legislation is a vast improvement on the uncertainty of years of case law.

Previously only available to non-ordinarily resident employees, this relief is very valuable and provides that for any non-domiciled employee arriving in the UK, any salary relating to non-UK duties that is paid into an overseas bank account should not be subject to UK tax, so long as the amounts are not remitted to the UK.