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New Reporting Issues for Offshore Property Owners – May, 2023

If you own or are contemplating buying property in the United Kingdom (and a number of other jurisdictions) you need to consider the reporting requirements and potential tax exposures that have arisen recently. These changes are more likely to trip up long-term owners, because we assume people in the process of buying offshore property are receiving professional advice.

Some of these changes have arisen to deal with clamor pointing to foreign ownership as contributing to unaffordable housing. Sometimes, they are accommodating demands for increased transparency on cross-border capital flows and ownership.

Registration of Foreign Ownership

The U.K.'s Economic Crime (Transparency and Enforcement) Act, which came into force in August of last year, requires the *beneficial owners* of non-UK corporations or partnerships (and apparently trusts) that own UK real estate to register that ownership in a public register.

We understand that January 31, 2023 was a deadline to register existing ownership. The registration process is more elaborate and time consuming than is the process elsewhere. If you happen to own UK property through an offshore entity, you should investigate how to get onside, in a way that is not too expensive.

In addition to rather serious penalties for failing to register, you will likely be unable to sell the property until registration is complete.

Taxes on Foreign Owners

The UK has slowly been expanding the scope of taxation of residential property held by foreign holders, entities in particular.

Since 2015, non-residents have been taxable on capital gains arising from the sale of residential properties. In 2019, this was expanded to apply corporate income tax to the gains for properties held by offshore entities.

Even prior to that, annual taxes were due on properties held by corporate entities (the so-called “envelope” regime).

Australia has had a register for foreign ownership of residential property for some time now.

Canada recently introduced new property taxes on residential properties acquired by non-residents (with some exemptions). Existing owners do not need to worry about this – but the trend to increased fiscal costs is worrying.

Increased Focus on Occupancy

Some countries have introduced annual taxes on under-utilised residential properties. The rationale is a mix of discouraging keeping residences empty and dealing with absentee owners enjoying the securities of maintaining wealth in a stable jurisdiction but not contributing to its tax base.

France has an occupancy tax aimed at second homes and unoccupied homes and would capture most properties held by offshore individuals / entities. It has clarified its occupancy tax exempts primary residences; however, it will apply to owners of other types of properties, including foreign owners and those holding property through a *Société Civile Immobilière*.

In addition to temporary taxes on foreign acquirors of residential property, the Canadian Federal government and a few Canadian municipalities have introduced laws targeting under-utilised (read vacant) residential properties. The Canadian government now applies a 1% annual tax on under-utilised residential properties owned by non-residents, including private companies and trusts with non-resident beneficiaries.

There are number of practical exemptions, but offshore owners of Canadian property need to be aware of the new rules and filing obligations.

The new law mandates an annual filing by owners of residential properties, if for no other reason than to claim an applicable exemption from the tax. The annual filing will require information about occupancy.

Many popular locations for holiday properties enjoy an exemption from the tax, but you need to verify this and you may need to make annual filings.

British Columbia has had a vacant residence tax since 2018. Sensing a fiscal opportunity as well as addressing affordability, a number of Canada's largest cities, have added their own 1% tax and filing requirements. (This applies to Canadian citizens as well.) An unused condo in Vancouver could now be subject to annual taxes, determined based on value, at three levels of government, exposing the owner to additional penalties if they were unaware of these new reporting requirements and failed to file and pay taxes.

Many countries immediately restricted access to existing registers. However, in December the Court

wound back its decision somewhat by saying that anyone with a "legitimate interest" should have access.

Not all countries will interpret this in the same way, but it will likely end up with a hurdle requirement for members of investigative organisations or the press generally needing to confirm a legitimate interest prior to being given access to a filing. Marketing groups will no longer have indiscriminate access.

The obligations to register foreign ownership of certain Australian assets beginning July 1 this year, are consistent with this tilting of the balance back towards respecting privacy while giving law enforcement adequate tools. The information will not be public, it will be available only to Government agencies for certain purposes.

Impact

Families with assets across borders and complex holding structures now need to pay close attention to increased registration or disclosure requirements in each of the countries in which they own assets or entities with respect to a wide range of assets.

It is not just ownership registers, but new tax-related filings and reports, including those testing economic substance, and local filings with respect to ownership and use of residential or vacation properties.

Organisations such as The Society of Trust and Estate Practitioners have been active in arguing that these registers, while adequately addressing their purposes, better balance privacy and security concerns. Recent events give hope for a better balance.

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