...with Neil Byrne on UK property ownership and tax

For many years a core strength of Optimus has been its property specialism, providing structuring and administration for a whole host of property investment and development interests. It's never dull and the tax landscape has undergone continual change, with yet more in the offing it seems.

Our Pension Director, Martin Hall, recently caught up with Neil Byrne, Director at TFO Tax to reflect on where we are in the world of UK property ownership and tax...

We began by looking back at how clients have typically structured their UK property investments and, as it turns out, there is nothing typical about it. Neil's view is that structuring has historically depended very much on the tax motives of each client:

"For example, if IHT is the driver, UK domiciled clients would typically have looked at using UK or offshore trusts as a holding vehicle, whilst non-UK domiciled clients may have tended towards a non-UK resident company so that the shares are treated as non-UK situs assets for IHT purposes. Bring other tax consequences, for example income tax or CGT, into the mix and other variants emerge depending on the end game. Some clients have opted for simplicity over tax mitigation and have acquired properties personally".

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Moving on I prompted Neil to try to capture succinctly what seems like a flurry of tax changes over recent years for advisers, owners and administrators to contend with:

"Yes, it's been a busy few years for tax advisers, without doubt, with several key changes introduced by HMRC which have affected both UK and non-UK resident or domiciled individuals. Properties held within offshore corporate vehicles are now within the scope of the Annual Tax on Enveloped Dwellings (ATED) legislation, with the potential for an annual tax liability, as well as tax being due on any capital gain when the property is sold. For individuals, there are restrictions in place in relation to the amount of loan interest that can be claimed as a deduction against rental profits. In both situations this now means that more thought needs to be given to the structuring of UK property acquisitions. This has led to the use of more "non-conventional", but very tax efficient, forms of structuring."

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And, it seems, there's no end in sight with the current Finance Bill containing a significant tax development for UK property held by non-resident individuals or trusts, as Neil explains:

"The key development in the Finance Bill is that there will be an extension to non-resident capital gains tax

(NRCGT) to non-resident commercial property owners from 6 April 2019, a charge which previously only applied to residential properties. The changes to NRCGT also bring in a new concept of a 'property rich company' which, broadly, is one which has at least a 75% interest in UK property. NRCGT will also apply to disposals of interests in such companies although there will be an exemption for investors who hold less than a 25% interest."

As well as the new NRCGT rules, from 6 April 2020 non-resident corporate landlords will be chargeable to corporation tax rather than income tax."

"Existing structures should also be reviewed as they may no longer be effective"

So, clearly much to focus the minds of investors in UK property whether based in the UK or not and, as Neil points out, guidance is essential:

"Individual and corporate investors in UK real estate now, more than ever, need to seek professional tax advice to ensure that future property purchases are structured in the most tax efficient manner taking account of the various changes to be introduced by HMRC. Existing structures should also be reviewed as they may no longer be effective."

"We are also advising clients on various pension structures that will be effective for ATED, CGT and IHT"

Asked whether there are any structures that particularly jump out as being effective in this brave new world, Neil's attention turned to circumstance and situation:

"There are still structuring opportunities available but it all depends on what the clients objectives are and what they are looking to achieve. You have the variants of Trust/Company structures that yes will occur some tax leakage but that is now the way in which the UK landscape is operating. We are also advising clients on various pension structures that will be effective for ATED, CGT and IHT and can be structured in such a way that is also efficient from an income tax perspective too, whilst complying fully with HMRC's annual reporting requirements. But, as before, structuring of UK property is very much horses for courses and each client will have an end game in sight which may involve other structures or, indeed, no structure at all."

What is obvious from my chat with Neil is that world of UK property and tax is set to become even more complex but there are still some great structuring options out there. My thanks to him for his invaluable insight. I'll be calling on it again, no doubt.

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