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Insights

SPRING BUDGET 2024

Mar 06, 2024

SUMMARY

It has been a busy Budget for the real estate sector today, particularly for the residential sector. The big announcement was the proposal to abolish SDLT's multiple dwellings relief (**"MDR"**). This came as a surprise and for those seeking to rely on the relief for a completion on or after 1 June 2024, they may have been racing to exchange today to lock in MDR on the acquisition.

However, there was some good news for those trying to access the housing market. The government is proposing to withdraw the furnished holiday letting regime and reduce the higher rate of CGT for those who pay CGT on selling residential properties as these are intended to improve access to housing. But elsewhere reform for SDLT was relatively light. The government did not respond to lobbying in a few targeted areas. A downsizer's relief and keeping the current lower thresholds beyond March 2025 were not mentioned.

In further good news the government gave the green light to a new non-authorised fund vehicle, to be called the reserved investor fund or "**RIF**".

SDLT - MDR ABOLISHED

MDR was introduced in 2011 to promote investment in residential property and increase private rental sector housing supply, by reducing the SDLT cost of portfolio purchases. HMRC had consulted on possible changes to MDR, intended to address both what it perceived as abuse of the relief (mostly by individuals acquiring two units of high-value residential property), and some technical points which led to surprising outcomes when applying the relief.

However, the government has taken the more drastic step of proposing to revoke the relief altogether after it evaluated MDR and concluded that there was no strong evidence that the relief plays a significant role in supporting residential property investment, and that it has a minimal positive impact on overall housing supply or PRS supply.

This change does not apply to contracts entered into on or before 6 March 2024, no matter when they complete, provided there is no variation of the contract after 6 March 2024. However, any contract entered into after 6 March 2024 can benefit from MDR only if it completes or it is substantially performed before 1 June 2024. The non-residential SDLT rates (of which the top rate is 5%) will continue to apply to purchases of 6 or more dwellings, but this could still be a significant increase on the possible 1% or 3% minimum SDLT rates which may have applied had MDR been available.

We expect this measure may have the greatest impact on investors outside London or on forward fundings, where unit prices tend to be lower, and it is perhaps surprising to see this change despite responses by a significant number of investors to the consultation suggesting that having MDR has had a positive impact on their decision to invest, and the size of their investment. Published policy costings show that the Treasury does expect a reasonable increase in revenue from this change, but whether that will come at the expense of the PRS / BTR sector remains to be seen.

SDLT - NO CHANGE TO MIXED-PROPERTY PURCHASES

The government also reviewed the rules for mixed-property purchases at the same time as MDR and has decided to not reform the SDLT rules for mixed-property for now. Under the mixed-property rules, it is possible to pay SDLT at the commercial rates even where only a small proportion of a property is commercial. It is abused by some but, perhaps because HMRC has had some success in the courts, the government has decided not to take forward an apportionment method for mixed-property purchases at this time.

FURNISHED HOLIDAY LETTING TAX BREAKS TO GO

Before the Budget, there was lobbying on several fronts to improve the UK's housing system.

To address a shortage of supply in long term rental housing in tourist hotspots, the government is proposing to make it less attractive for landlords to rent out their residential properties as furnished holiday lets. From April 2025, favourable tax breaks will be withdrawn from furnished holiday lets. There will be anti-forestalling rules aimed at preventing the obtaining of a tax advantage through the use of unconditional contracts to obtain capital gains relief under the current rules.

It remains to be seen whether the government's aim is achieved and whether a holiday let will be converted to the longer-term lettings market or the sales market.

RIF GIVEN GREEN LIGHT

In a welcome development in the Budget the government confirmed that they will take forward the previously published proposal to introduce a new non-authorised fund vehicle, to be called a "Reserved Investor Fund (Contractual Scheme)" (a "**RIF**").The new RIF regime creates an unauthorised variant of the authorised CoACS regime, with essentially the same tax treatment as a CoACS, namely:

- transparent for income purpose – so unit holders (but not the fund) are taxed on rent or other income;
- opaque for capital gains purposes, but with an exemption for the fund from gains – so investment by the fund could be turned-over without "dry" tax charges; and
- an exemption from all transfer taxes (stamp duty, SDRT or SDLT) on dealing in fund units, and a similar exemption applying to transfers of assets into the fund in exchange for fund units.

However, concerns about a RIF being used to avoid UK tax on gains means that a RIF must:

- be broadly marketed (satisfying the "genuine diversity of ownership test") OR must either be (i) widely held or (ii) controlled by certain institutional investors (satisfying a "non-close" test); AND
- satisfy one of three conditions:
  - the Fund must be UK property rich – essentially 75% of its gross assets must be UK property; or
  - all the investors in the Fund must be exempt from UK tax on gains (essentially the same requirements that apply in relation to an exempt unauthorised unit trust): or
  - the Fund must not invest in UK property or in UK property rich entities.

The government recognises that a workable regime will require clear and pragmatic rules to handle temporary breaches of these conditions – this will be addressed in draft legislation to be published. A vehicle that does not satisfy these conditions will lose exemption from SDLT (so a unit transfer will be subject to SDLT to the extent the fund holds UK property) and will cease to be opaque for the purposes of capital gains.

For UK property investors, a UK property rich RIF offers a possible additional fund solution. The requirement that the RIF must satisfy either the "genuine diversity of ownership test" or the "non-close" test, means in practice a RIF may be competing with other UK fund regimes (notably REITs, exempt elected funds and PAIFs). In suitable circumstances however, a RIF could provide a new, simple onshore fund solution.

FALL IN HIGHER RATE OF CGT ON RESIDENTIAL PROPERTIES

The government proposes reducing the rate of capital gains tax for residential property gains from 28% to 24% from 6 April 2024. It anticipates that the tax cut will in fact increase revenues as there will be more transactions. It is hoping that the fall in rate will incentivise earlier disposals of second homes, buy-to-let properties and other properties where the owner does not benefit from the relief for main residences, thereby improving liquidity in the residential property market.

NICS TAX CUT

As expected, the government's big announcement today was its proposal to cut national insurance contributions of employees and the self-employed by 2% (rather than an income tax cut of 2%) to build on its equivalent tax cut at the Autumn Statement. This measure will be effective from 6 April 2024.

VAT REGISTRATION THRESHOLD TO RISE

In a benefit for small business, from 1 April 2024 the government proposes to increase the VAT registration threshold to £90,000 from £85,000, where it has languished for the last seven years. This measure is consistent with Hunt's pro-growth message.

TAX RISK

Tax risk focused announcements were less prominent than in previous years' Budgets, but there were still some proposals of note:

Raising tax advice standards

The government has launched a consultation on raising standards in the tax advice market through a strengthened regulatory framework. This follows from an earlier call for evidence on raising standards. Advice from unregulated advisers can range from negligent to dishonest and undermines the integrity of the tax system; we welcome the government's commitment to address this and to engage with industry. Of the three alternative proposals as to who should act as regulator, we agree that membership of a professional regulated body for tax practitioners is critical. The final proposal that an independent, statutory, body should be established as regulator raises a number of questions. This approach, which would introduce an additional level of regulation for the significant majority of advisers who are already members of professional bodies, is likely to involve uncertainty, risk, complexity and expense and it is not yet clear to what purpose? Further thought should also be given to the separate proposal included in the consultation to introduce a registration requirement for agents dealing with HMRC; this may introduce unnecessary complexity and bureaucracy.

Investment in HMRC

As expected, referring to the widely held mantra that everyone must pay their fair share of tax, the Chancellor announced that additional investment would be made available to HMRC to take action to close the tax gap. This is with the aim of raising an additional £4.5 billion by 2028-2029. Little further detail has been provided other than to say that a particular focus will be on supporting taxpayers out of tax debt faster. We hope that the additional investment will result in the hire by HMRC of additional, and well trained, personnel who can support and accelerate ongoing compliance work and reverse the trend of prolonged enquiries which create uncertainty and expense for responsible taxpayers.

MISSED OPPORTUNITIES

On days like this, it is always as much about what wasn't announced as what was. The following were missing from today:

SDLT:

There was no proposal to make permanent the current lowest threshold before which stamp duty is paid on acquiring a property. This threshold is due to fall again after 31 March 2025 (including the threshold of £425,000 that applies to first-time buyers) to levels that applied before Kwasi Kwarteng's Budget. It could be very busy for residential property conveyancers at the start of 2025.

There was no proposal for a downsizer's relief to encourage release of larger properties into the market, to help housing liquidity, although it seems the government is hopeful that the reduction in the capital gains tax rate for residential properties that do not benefit from the main residence exemption may go some way to address liquidity.

A foreign owners annual levy

There was no proposal to adopt Michael Gove's idea of a new annual tax for foreign owners of second homes in the UK. Gove was campaigning for the tax as an additional deterrent to non-residents snapping up UK homes and potentially distorting the prices of UK residential properties to the disadvantage of would-be UK homeowners. It may be that this idea is still being worked up and may feature in the Conservative's manifesto.

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professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP's principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.