



REGISTER OF OVERSEAS ENTITIES - HMRC REACTION

We issued several Tax Alerts in 2022 to advise on the requirement for foreign legal entities owning UK real estate to declare on a public register the identities of the individuals who own and/or control them under the provisions of The Economic Crime (Transparency and Enforcement) Act. Although much of the data reported is publicly available, an exception to this is where the legal entity is owned by a trust. In these circumstances, information on the trust, its settlor and beneficiaries was required to be provided but is available only to the tax authorities.

The deadline for the registration of foreign legal entities which already owned UK land was 31 January 2023, so it has now passed. There has been huge demand for support services to assist with the registration process and verify the data, with only a very limited number of professional firms able or willing to provide the service. This has led to a logjam of unregistered cases in the system and it remains to be seen whether there will be a sympathetic 'light touch' approach towards the charging of penalties in view of the market capacity issue, particularly where entities can demonstrate that they had engaged with the process by the deadline.

Whatever practical problems there have been with the implementation of the register, what is undeniable is that the data now available to HMRC on the ownership behind foreign companies which hold UK land is a veritable treasure trove of information. The question that we, and many others, have been pondering is what, exactly, HMRC would do with it? We have not had to wait long....

HMRC have now issued a document entitled 'Why the Register of Overseas Entities is important for tax'. This document describes some of the tax features and complexities associated with owning UK land through a foreign company,

including:

- A 15% SDLT charge on purchase of residential property since March 2012;
- The liability to the Annual Tax on Enveloped Dwellings (ATED) since April 2013;
- The introduction of CGT for non-residents on residential property in April 2015;
- The complicated new rules relating to profits on the dealing or development of land introduced in July 2016;
- The extension of non-resident CGT to non-residential property in April 2019, as well as the introduction of CGT on the disposal of interests in 'property-rich' companies;
- The introduction of liability to Corporation Tax (instead of Income Tax) on rental income received by foreign companies, adopting principles such as transfer pricing and corporate interest restrictions;
- The introduction in April 2021 of a 2% SDLT surcharge on residential property for purchases by a foreign company, or by a UK company in foreign ownership;
- Risks and implications of a company becoming UK resident under the 'central management and control' principle;
- Various Inheritance Tax changes affecting offshore trustees holding UK residential property indirectly;
- The multitude of Income Tax and CGT provisions which can have the effect of imputing income and capital gains of an offshore entity to a UK resident individual.

It may be that HMRC is seeking to be helpful in reminding us of these numerous complexities which can affect the tax treatment of UK land owned by offshore entities. However, the document then goes on to explain the extended time limits for raising assessments involving an offshore matter and the increased penalties involved. HMRC advice is to come forward and notify them by **28 February 2023** of an intention to make a disclosure. This is an incredibly short deadline and the implication is that if a matter subsequently comes to light as a result of data which HMRC now have from the register, reduced penalties for an unprompted disclosure will not be permitted unless intent to make a disclosure was notified by 28 February. So perhaps this document is HMRC's way of saying 'we have a mass of data which we didn't have before and we are going to use it, so be warned'.

Please get in touch with your usual Rawlinson & Hunter contact should you require further information or assistance with the above.

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Congratulations to our offices for reaching these important milestones!



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