

Disclosure of ownership of UK property

12 MAY 2016

CATEGORY:

[ARTICLE](#)

At the international anti-corruption summit today David Cameron has announced significant proposals that will affect foreign owners of UK property.

In today's announcement the Prime Minister has said that "Any foreign company that wants to buy UK property or bid for central government contracts here will have to join a new public register of beneficial ownership information before they can do so." This register will also apply to foreign companies who already own property in the UK. Importantly, while previous tax measures have focussed on residential property, this announcement appears to apply to commercial property as well.

The register of beneficial property owners appears similar in concept to the 'Register of People with Significant Control' ('PSC') that was introduced for UK companies in April this year. This requires the shareholders of UK companies and other persons who can exercise control over those companies to be identified on a register filed with Companies House.

The register is proposed as a measure to 'punish and drive out corruption' but will also have a significant effect on families and businesses who value their privacy. While it may be necessary and proportionate for HMRC and the Police to have access to beneficial ownership information in order to ensure the proper collection of Revenue and to combat money laundering and corruption, it is not clear why it is necessary for the public to have free access to that information as well.

The application of the rules to both commercial and residential property means that not only will individuals purchasing high-value residential property be subject to the new rules, but any foreign company establishing a branch in the UK and acquiring UK property may also find itself having to comply with onerous rules relating to the disclosure of its shareholders.

While a headline grabbing announcement has been made today, there remains a good deal of detail that needs to be understood:

Who is a beneficial owner?

- In cases where a company has a single owner, the identity of the beneficial owners will be relatively straightforward to assess. However, there may be companies with a multiplicity of owners, where identifying beneficial owners is more complex. It is expected that listed companies, which are subject to their own disclosure requirements, will be exempted. The PSC register has a 25% threshold, below which shareholders do not have to be disclosed. A similar threshold may apply here, although it would be expected that family holdings would be aggregated.
- Trusts, which can hold property for a range of individuals or purposes also present a complication in identifying a beneficial owner. Again here the approach of the PSC register may be instructive. In that case the identity of the trustee is disclosed as well as individuals who can control the actions of the trustees, but not beneficiaries per se. The approach of the Common Reporting Standard, which already requires the identification of beneficiaries with fixed interests in trusts, may also be followed.

How will compliance be assured?

- At a practical level it appears that it will simply not be possible for a foreign company to be registered as the owner of a property at HM Land Registry unless it has first registered the details of its beneficial owners.
- If the Register takes its cue from the PSC then it is likely that there will be criminal penalties for failing to comply. In situations where there is a failure to comply with the PSC, where shareholders do not disclose beneficial ownership information, they have the rights in their shares (to vote, receive dividends, etc.) restricted. Similarly, it may be contemplated that where adequate beneficial ownership information is not received for a property, use and/or ownership of that property could be restricted and ultimately be forfeited to the state.
- It is also worth noting that today's announcement also included measures for police and law enforcement to directly access the (private) beneficial ownership registers that are maintained in the jurisdictions in which they are incorporated. In the event of non-compliance with the register, this will allow those authorities to directly verify information contained on the Register.

What other implications are there?

In 2015 the Government announced its intention from 2017 to charge non-UK domiciled trusts and individuals who owned UK residential property through companies to inheritance tax as if they owned the property directly. This would have represented a significant enforcement challenge for HMRC, where no accessible register of those ownerships exists. The introduction of the register of beneficial property ownership will significantly assist the collection of that tax.

Looking further ahead, it has been a matter of significant press comment that foreign companies that own residential property, particularly high value homes, could be sold without incurring any liability to SDLT that would be payable on the sale of the property itself. A UK register of the ownership of such companies raises the possibility that a charge to SDLT on the sale of shares in such companies could be introduced and as with the inheritance tax charge above, easily enforced.

What is the cost?

The Government appears to be fighting a war on corruption and in any war, there will be collateral damage. In this case the collateral damage is the privacy of a law-abiding individual and the infringement of "the right to respect for his private and family life [and], his home" (Article 8 – European Convention on Human Rights). There are many reasons why an individual may seek to preserve the privacy of their home as is illustrated by the case of the actress Emma Watson (whose troubles with stalkers is well documented), who purchased her home using a Panamanian nominee company to preserve her privacy. There is no tax advantage to be gained from such arrangements and there are no doubt numerous other examples of why an individual might seek to rely on basic privacy for their personal security. What the Government will do to address the legitimate concerns of such individuals remains to be seen.

Finally, these rules may do nothing to combat those who are willing to conceal the true ownership of assets. Following the release of the Panama Papers, the Russian cellist Sergei Roldugin has been reported as the beneficial owner of companies with billions of dollars of funds, but there does not appear to be any certainty that he is in fact the owner. Who would be surprised if the register of property ownership does not also reveal a number of other Sergei Roldugins?

For further information please contact your usual Withers contact.

Authors

Christopher Groves

PARTNER | LONDON

Private client and tax

 +44 20 7597 6127

 christopher.groves@withersworldwide.com

Lindsay Brown

SPECIAL COUNSEL | GENEVA

Private client and tax

 +41 22 593 7723

 lindsay.brown@withersworldwide.com

Justine Markovitz

CHAIRPERSON | GENEVA

Private client and tax

 +41 22 593 7711

 justine.markovitz@withersworldwide.com