

STEP JOURNAL

Downloaded on 7th October 2024 - 07:05

Web exclusive: Looking behind the name

Claire Tilbrook highlights recent initiatives that aim to enhance the transparency of beneficial ownership of UK real estate by foreign companies.

10 June 2016

Claire Tilbrook highlights recent initiatives that aim to enhance the transparency of beneficial ownership of UK real estate by foreign companies.

Key points

What is the issue? Significant changes to the ability of individuals to keep details of their interests in UK real estate private have been announced.

What does it mean for me? Practitioners should review existing structures where foreign companies hold UK real estate and make clients aware that the privacy such structures currently provide is very likely to be removed.

What can I take away? Many clients who chose not to 'de-envelope' following the introduction of ATED and the removal of CGT and IHT advantages for such structures may wish to reconsider this decision.

Significant changes to the ability of individuals to keep details of their interests in UK real estate private have been announced. The UK Persons with Significant Control (PSC) Register came into force in April 2016, requiring UK companies to produce, keep and maintain a public register of people with significant control over that company. In future, it will, in most cases, now be possible to identify the individuals who beneficially own UK real estate held by UK companies. The PSC Register does not apply to foreign companies.

The Discussion Paper

On 4 March 2016, shortly before the introduction of PSC Registers, the UK government published a discussion paper: *Enhancing transparency of beneficial ownership information of foreign companies undertaking certain economic activities in the UK* (the discussion paper).[1](#)

The discussion paper targeted foreign companies that either purchase real estate in England and Wales or participate in public contracting, both of which are perceived to be areas of particular concern. However, the discussion paper states that the proposed information regime may be extended in the future and it now seems clear that this will cover the whole of the UK.

The discussion paper set out ideas for how to '*identify, record and use information on the beneficial owners of foreign companies*'. The closing date for responses was 4 April 2016, and we assume that a formal consultation will now be issued, as the government has set out its firm intention to progress the proposals set out in the discussion paper.

The motivation behind this initiative is a desire to tackle perceived corruption risks and the government's concern that the attraction of UK property as a form of global currency, and the high value of London property in particular, present an opportunity for criminals to launder considerable sums of money.

The government has calculated that between 2004 and 2014, UK law enforcement investigated over GBP135 million of UK real estate held in foreign companies.

The proposals, as set out in the discussion paper, would require foreign companies to provide information on their beneficial ownership before they are able to buy real estate in England and Wales. The information required would be broadly similar to that required in PSC registers (including name, date of birth, usual residential address, nationality, country or state of usual residence) and the government has suggested several options for who might operate the new public register.

Information about foreign companies owning UK real estate

A foreign company would only be able to register its ownership of UK real estate by providing the Land Registry with a unique identification number obtained from the new register.

There are significant penalties, including imprisonment and a fine, now in place where UK companies which fail to meet their PSC regime obligations. It is clearly harder to enforce criminal penalties against foreign companies and so the government recognises that alternative methods of enforcement will be needed. These might include daily fines and restrictions on the ability to charge or sell existing property.

Shortly after the publication of the discussion paper on 17 March 2016, the Land Registry published an Overseas Companies dataset² containing considerable amounts of information (where this is already available to the Land Registry and, often, it is not). The data published for each foreign owner of UK property includes (where known):

- title number,
- tenure (freehold/leasehold),
- land or property address,
- price paid (where available),
- administrative area (local authority area) ,
- company name,
- company registration number (where available),
- type of company (legal entity),
- country/territory of incorporation (from 1999 onwards),
- correspondence address(es),
- date the owner was registered at the Land Registry,
- additional proprietor indicator (indicates if there are other proprietors on the register which are not overseas companies), and

- multiple address indicator (indicates where there is more than one property address on the register).

At present, for foreign companies that own real estate in the UK, the Land Register merely shows the name of the company and its territory of incorporation. Before registering a foreign company as an owner, the Land Registry may also ask the company for evidence that it is a legal entity and can be registered as such. For example, it may require constitutional documents, such as its memorandum and articles of association, but this information is not made public on the Register.

The Land Registry has stated that it will collect and store data on those who access the database.

Existing properties

There are approximately 100,000 existing properties owned by foreign companies in England and Wales and collecting beneficial ownership information on these would present considerable challenges.

In the discussion paper, the government recognised these challenges, putting forward some proposals and asking for views. One approach may be to ask each of the registered proprietors of these titles to pay a fee to obtain a unique identifier number from the new register and provide it to the Land Registry. Possible civil and criminal sanctions against foreign companies who provide false information or fail to keep the initial information up to date could include daily fines until the breach is remedied, combined with charging orders against property for fines; suspending the unique identification number of the foreign company; and preventing the company from selling or charging its property until the breach is remedied.

Responses were requested by 4 April 2016 and, since the closing date, the publication of the so-called 'Panama Papers' has strengthened both public opinion and government's intention to push ahead with an ambitious transparency agenda.

The transparency agenda

As widely expected, at the international anti-corruption summit held in London on 12 May 2016, David Cameron announced that *'...for the first time, foreign companies that already hold or want to buy property in the UK will be forced to reveal who really owns them ... Any foreign company that wants to buy UK property ... will have to join a new public register of beneficial ownership information before they can do so. This will be the first register of its kind anywhere in the world. ... Crucially, it will include companies who already own property in the UK, not just those wishing to buy. Foreign companies own around 100,000 properties in England and Wales. Over 44,000 of these are in London.'*

No more detail than this has been announced as yet and so many questions remain, not least on the timing of these changes. It seems that the new foreign company registers will cover all UK real estate and not just UK residential real estate, but this will need to be clarified. No specific proposals have

been made for the reporting of beneficial ownership interests where trusts are involved, but if the new registers closely mirror the UK PSC Registers then we can expect that trustees will be named on the register.

In the discussion paper, the government stated that it is considering exempting foreign companies incorporated in jurisdictions that already have an accessible central register of beneficial ownership information (holding adequate, accurate and current information) from providing similar information to a UK foreign company beneficial ownership register. Following David Cameron's announcement at the anti-corruption summit on 12 May, it remains to be seen whether this will be the case.

What does this mean for clients?

Many fully compliant individuals have chosen to buy UK real estate, including their family home, through foreign companies because of very real privacy concerns. For example, those in countries with a heightened risk of kidnap have an entirely legitimate motive for avoiding public records of their wealth. Jersey Finance has already publically questioned whether this proposal is a proportionate response to the threat posed by the proceeds of corruption.

Following the introduction of the annual tax on enveloped dwellings (ATED) in 2013 and the subsequent removal of capital gains tax and inheritance tax advantages for foreign corporate owners of UK property, some property owners took a view to retain such structures largely because of the privacy they afforded the beneficial owners.

Given that this privacy looks almost certain to be removed, there are now very few circumstances in future where a non-UK company will be an attractive vehicle for holding UK residential property.

Those with existing structures containing foreign companies owning UK real estate should look again at whether to 'de-envelope' their UK real estate structures. There may be significant costs of de-enveloping residential property, particularly if the property is mortgaged or has increased in value since 2013.

This will be a complex decision and those affected will require detailed advice for each individual property. For many, the advice will need to be given in the wider context of advising on the changes to the taxation of non-domiciled individuals due to come into force in April 2017.

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- ➊ www.gov.uk/government/uploads/system/uploads/attachment_data/file/512333/bis-16-161-beneficial-ownership-transparency.pdf
 - ➋ www.gov.uk/guidance/land-registry-overseas-companies-data

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