



Real Estate Update

A round-up of the latest Real Estate news

SUMMARY

A ROUND-UP OF NEWS FROM THE LAST QUARTER:

1. CGT ON DISPOSAL OF UK RESIDENTIAL PROPERTY BY NON RESIDENTS: UPDATE ON LATEST GOVERNMENT CONSULTATION
2. BUYER NOT LIABLE TO PAY VAT: PROPERTY SALE COURT OF APPEAL DECISION
3. CREDITOR'S CHARGING ORDER TAKES PRECEDENCE OVER WIFE'S MATRIMONIAL HOME RIGHTS
4. MAYOR OF LONDON INFRASTRUCTURE CONSULTATION PLAN FOR LONDON
5. VAT CHANGES ON FOR RETAILERS
6. RESIDENTIAL LANDLORDS OBLIGED TO CHECK IMMIGRATION STATUS OF TENANTS

1. CGT ON DISPOSAL OF UK RESIDENTIAL PROPERTY BY NON-RESIDENTS: UPDATE TO GOVERNMENT CONSULTATION

On 31 July 2014, the government published an update to its consultation on extending capital gains tax to non-resident persons disposing of UK residential property, which closed on 20 June 2014.



The key point to emerge from the government's update is that it has been persuaded to limit the scope of the extended CGT charge so that it does not catch disposals of UK residential property held by non-resident institutional (corporate) investors either directly or through an arrangement that is not controlled by a few private investors. It will achieve this by introducing a form of close company test.

The government will publish a full response to the consultation in early autumn 2014.

2. BUYER'S LIABILITY TO PAY VAT

The Court of Appeal has held that a buyer was not liable to pay VAT on the purchase price of a freehold commercial property. The sale contract incorporated a term providing that any obligation by the buyer to pay money included an obligation to pay any VAT chargeable in respect of that payment, and that all sums made payable by the contract were to be exclusive of VAT.

The seller had opted to tax (charge VAT in respect of the property) but did not reveal this to the buyer before exchange of contracts and did not in fact charge VAT on completion. The buyer did not question this having rightly assumed that no VAT was payable as the election to charge VAT had not been disclosed.

When HM Revenue & Customs approached the seller for the VAT on the sale price about a year after the sale, the seller tried to pass this liability onto the buyer.

The court held that the contract, properly construed in light of the circumstances of the transaction, indicated that the price was inclusive of VAT (*CLP Holding Co Ltd v Singh and Kaur [2014] EWCA Civ 1103*).



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- **Note:** The effect of this for the seller was that it was obliged to pay the VAT element on the sale price (20%) to the tax authorities due to its failure to clarify the VAT position with the buyer prior to exchange of contracts.

It is extremely important to obtain legal advice on the sale of any commercial property to ensure that the correct VAT procedure is followed and that liability is properly apportioned under the terms of the contract.



3. CREDITOR'S CHARGING ORDER TAKES PRECEDENCE OVER WIFE'S MATRIMONIAL HOME RIGHTS

In *Fred Perry (Holdings) Ltd v Genis and another (unreported)*, 1 August 2014, the High Court gave precedence to a commercial creditor's charging orders over a wife's home rights and made an order for sale of the family home.



4. THE MAYOR OF LONDON HAS LAUNCHED A CONSULTATION PLAN ON HIS LONG-TERM INFRASTRUCTURE PLANS FOR LONDON.

The Mayor of London has launched the London Infrastructure Plan 2050, which considers the capital's infrastructure needs, the associated costs and funding possibilities. Among other things, the plan considers London's future needs relating to housing, transport, green infrastructure, digital connectivity, energy, water and waste.

The plan is set out in two main documents, a presentation-style document outlining the proposals and a consultation paper that provides more detail. A number of supporting documents provide background information.

It is interesting to note the plan's predictions of London's future needs, such as the need for 1.5 million additional homes and a 70% increase in public transport capacity, together with the assertion that housing and transport will account for 75% of the infrastructure cost.

However, given its long term nature, it is quite possible the plan's specific proposals may never be implemented. For example, the plan's suggestion of a new airport on the Thames estuary was rejected by the Airport's Commission within days of the plan's publication.

The consultation closes on 31 October 2014.



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See www.london.gov.uk/getinvolved/consultations



5. TRANSFER OF A GOING CONCERN – CHANGES IN VAT POSITION TO BENEFIT RETAILERS WITH PROPERTY INTERESTS

HM Revenue & Customs (HMRC) has issued a brief announcing further changes to its VAT policies concerning transfers of a business as a going concern (TOGC) where the assets include an interest in property.

Background: Where a supply of goods or services constitutes a TOGC, for VAT purposes the transfer is VAT-free subject to certain conditions.

Facts: The HMRC brief states that some examples from the following transactions are now covered by the TOGC provisions and so are **outside** the scope of VAT, subject to both the general conditions and the transferor in effect transferring substantially the whole of its economic interest in the land to the transferee:

A **surrender of a property** lease; for example, where a retailer sells its retailing business to its landlord.

A **grant of a lease**, even if it is not part of

a property letting business; for example, where **the transfer of a retail business involves the grant of a lease rather than a sale of the seller's interest in the land.**

For historic transactions, businesses may be able to claim refunds for overpaid VAT, and for stamp duty land tax (SDLT) to the extent that it was assessed on a value that incorrectly included VAT.

In addition, the brief introduced a change to the VAT policy on TOGCs of some new residential and charitable developments. HMRC now accepts that a buyer of a relevant development as part of a TOGC can take on the seller's status as a person constructing a building, so that a grant of a major interest in that land by the buyer can be subject to 0% VAT.

Comment: The announcements in the brief are a welcome change of policy for affected businesses, in particular the extension of the TOGC rules to non-property letting businesses.

Taxpayers intending to seek repayment of SDLT and VAT for historic transactions should do so as soon as possible, as time limits apply.

6. RESIDENTIAL LANDLORDS OBLIGED TO CHECK IMMIGRATION STATUS OF TENANTS

The Immigration Act 2014 (IA 2014) prohibits private landlords of residential properties from allowing certain people to occupy those properties.

The prohibition is based on the immigration



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status of the occupiers and **landlords will have to check the status of prospective tenants, and other authorised occupiers, to ascertain whether they have the right to occupy the premises before granting a tenancy.**



Before the provisions of the IA 2014 are brought into effect in full, the Home Office is piloting the scheme, with effect from 1 December 2014, in Birmingham, Walsall, Sandwell, Dudley and Wolverhampton as part of a phased introduction across the country.

The Home Office has provided:

- An online **right to rent tool** to ascertain if a property will be affected, how to carry out a right to rent check, and information on requesting an official right to rent check from the Home Office at www.gov.uk
- A helpline: telephone number 0300 069 9799.

The Home Office states that:

- It will evaluate the implementation of the pilot in spring 2015.
- It expects to continue with the phased introduction of the requirement to check immigration status across the United Kingdom next year.

Comment: When entering into a residential tenancy agreement, a landlord should now give careful consideration not only to the financial covenant strength of any potential tenant but also their immigration status.

The landlord should seek legal advice to:

- a. ensure that all identification is correctly checked in accordance with the procedure set out in the IA; and
- b. that Data Protection Act procedures are followed in relation to the collection, management and destruction of such personal information.
- c. consider its position in respect of assigning its obligations under the IA to third parties, such as managing agents.

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