



Tax treatment of UK property held by non-residents



Following some significant legislative changes in recent years, all gains realised on UK land and property disposals by non UK residents are now within the scope of UK tax. This includes gains on residential and commercial property, even if held indirectly

Prior to April 2019, only gains arising on the disposal of UK residential property by non-UK residents were subject to non-resident capital gains tax ("NRCGT"), with gains arising on the disposal of UK commercial property falling outside the scope of a UK tax charge.

Since April 2019, non-UK residents disposing of any UK land or property (whether directly or indirectly) have been subject to UK tax on any gains arising. In addition, in April 2020 there were further changes in the reporting requirements for non-resident companies receiving UK rental income.

Tax rates

The rates of tax for non-UK residents in relation to gains on the disposal of UK property are the same as for UK residents. For individuals, this will depend on the level of other UK taxable income and whether the disposal is of residential property (currently 18% or 28%) or other UK real estate interests (currently 10% or 20%). For trustees, the rate is 28% for UK residential property gains and 20% for all other UK land related gains. Non-residents are entitled to the normal CGT reliefs and exemptions, including the annual exemption which is £12,300 for 2020/21 for individuals; trustees are entitled to half the annual exemption.

Prior to April 2019 non-UK resident companies were subject to NRCGT at a rate of 20% in respect of gains arising on the disposal of residential property only. However, from April 2019 onwards non-UK resident companies have been subject to Corporation Tax ("CT") on the disposal of all UK land and property interests (currently at 19%).

Rebasing of gains

The default position is that the property's cost value is rebased to the value at April 2019 for commercial property disposals or indirect disposals of UK land and to the value at April 2015 for residential property disposals. Only gains accruing since these dates will be exposed to tax in the hands of the non-resident, although there is also an option to calculate the gain or loss using the original acquisition cost if this is beneficial.

For offshore companies that become UK resident post April 2019, the rebasing rules will continue to apply, so as not to discourage non-UK resident companies from "on-shoring".

Indirect interests

Indirect interests in UK property also fall within the new regime. The indirect interest rules apply where there is a disposal of an entity that derives 75% or more of its gross asset value from UK land (a "land rich" company). There is an exemption for any investor who owns less than a 25% interest. A disposal of an indirect interest will most commonly occur when shares in a company holding UK property are disposed of by a non-UK resident individual or trust. However, UK land interests held in partnerships, trusts or UK Real Estate Investment Trusts ("REITs") by way of options or other rights over property will also be chargeable.

Interests held in Collective Investment Vehicles ("CIVs") such as REITs are potentially caught regardless of the extent of the interest held, although the applicable double tax treaty may remove the UK's taxing rights over the gain if there is substantial and regular trading on a recognised stock exchange.

There is an exemption from charge for gains on disposals of interests in "land rich" companies if the underlying land is used for the purpose of a continuing qualifying trade, which has been carried on for at least a year prior to the disposal.

Losses

Capital losses arising to non-UK resident companies on disposals of UK land interests can be offset against any other company chargeable gains. Losses arising to non-resident individuals and trustees will only be available to offset against other residential and non-residential property gains.

Hold-over relief

Gains can be "held over" in respect of disposals of business or agricultural property and disposals giving rise to inheritance tax ("IHT"). These rules have been amended with effect from 6 April 2019 to specifically include interests in UK land.



Reporting a disposal to HMRC

For non-UK resident individuals and trustees, disposals of UK land interests must be reported to HM Revenue & Customs (“HMRC”) within 30 days of completion, even if no tax is payable or a loss arises. Any NRCGT due is payable within the same 30 day period, even if a self-assessment tax return is completed (whereas for disposals prior to 6 April 2020 it was possible to defer payment to 31 January following the tax year end).

Non-UK resident companies not already completing annual CT returns (i.e. in respect of UK rental income received after April 2020) must register for CT within 3 months of the date of becoming chargeable to CT; the tax due will be payable within 3 months and 14 days of the disposal.

If the non-UK resident company completes annual CT returns, the disposal can be reported in the annual return and the tax will be payable within 9 months and one day of the end of the accounting period.

Other UK tax considerations for UK property

ATED

The Annual Tax on Enveloped Dwellings (“ATED”) related CGT regime, which previously applied to gains realised on disposals of “high-value” residential properties owned by companies from April 2013, was abolished with effect from April 2019.

However, companies holding UK residential property valued at over £500,000 (as at April 2017 or on purchase if later) must continue to file annual ATED returns each April and pay the appropriate annual charge, depending on the value of the property. Certain reliefs may apply (e.g. for rental businesses and property developers), although a relief declaration return must still be filed each April in order to claim the relief.

SDLT

Currently Stamp Duty Land Tax (“SDLT”) applies on purchases of UK property by non-UK residents at the same rates as for UK residents. However, from 1 April 2021 non-residents will pay a surcharge of 2% on purchases. This surcharge is in addition to the higher rates that apply for additional residential property purchases and acquisitions by companies, taking the top rate of SDLT for non-resident purchasers to 17%. However, the acquisition of shares in a non-UK resident company that owns UK property remains outside the scope of SDLT.

Due to the impact of the Covid-19 pandemic, the SDLT threshold has been increased from £125,000 to £500,000 for residential purchases during the period from 8 July 2020 to 31 March 2021, although the 3% additional property rate will continue to apply (and is mandatory for companies and most trusts).

VAT

Valued Added Tax (“VAT”) may also need to be considered in relation to commercial property. Commercial property may be “opted to tax” in which case VAT can be recovered on expenses incurred but will need to be charged on rental income and on the eventual sale. A property forming part of a rental business can be transferred as a going concern if it is opted to tax and if the purchaser registers for VAT. This prevents the purchaser being charged VAT on the acquisition and means that VAT can be recovered on expenses. However, VAT must be charged on the rent and on the eventual sale of the property. SDLT is charged on the VAT inclusive price of the property.

Capital allowances

Capital allowances may be claimed on certain fixtures within a building at rates of 18% or 6%. As part of the commercial sale and purchase negotiation it is possible for the vendor and purchaser to make a joint election (a s.198 election) in order to determine the value of the fixtures that transfer as part of the sale.

Rental income

UK rental income is liable to UK tax and must be declared annually to HMRC. Non-resident corporate landlords that have 20% income tax withheld by their letting agent/tenant will not need to file annual CT returns for rent received from 6 April 2020, although they may choose to do so to access the lower CT tax rate. However, if a disposal of UK property occurs, they will come within the CT filing regime from that point.

Non-resident individuals are liable to income tax on their UK rental profits at their marginal rate (up to 45%) after any available personal allowance. Non-resident companies are liable to 20% income tax on UK rental profits received up to April 2020 and 19% CT thereafter. Non-resident trustees pay income tax at 20% for life interest trusts or 45% for discretionary trusts (although certain expenses and the standard rate band will bring some income within the 20% tax rate).

IHT

The direct holding of UK land and property by non-UK resident individuals or trustees is likely to result in IHT exposure, even if the owner or settlor is not UK domiciled. Furthermore, UK residential property held in offshore companies is now within the scope of IHT, as are all loans that are applied in relation to UK residential property.

Trust register

For non-resident trustees, holding UK real estate is likely to result in a requirement to complete the UK Trust Register. Under the EU’s Fifth Money Laundering Directive, trusts that acquire UK land from 10 March 2020 onwards will be required to register even in no tax liability has arisen.

Summary

There are various tax implications to consider when investing in UK real estate, with significant changes having been implemented in recent years. It is therefore essential to seek specialist advice in relation to this complex area.



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