



Non-residents and UK property

July 2018

Further update on April 2019 tax changes

Non-UK residents owning UK real estate, whether directly or via companies, partnerships, trust arrangements or collective investment vehicles, should be aware of important UK tax changes due to take effect from April 2019. On 6 July 2018 draft legislation to provide for these changes, together with a further consultation response, was published by the UK government. This update will be of particular interest to tax-exempt investors and non-UK collective investment vehicles (CIVs).

From April 2019, all gains from UK real estate realised by non-UK residents, whether of residential or non-residential (commercial) property and whether by way of direct or “indirect” disposal, will be subject to UK capital gains tax or corporation tax on chargeable gains (as applicable). This will be a fundamental extension to the scope of the UK tax regime, which has historically been very favourable for non-UK investors investing in UK real estate.

The most recent proposals may mean that non-UK CIVs (such as JPUTs) may need to elect to fall outside the new rules on “indirect” UK property disposals. Details as to the timing and process requirements for any such election are expected later this year.

Current UK tax rules

The UK tax rules applicable to UK real estate purchases, holdings, and sales have been the subject of considerable change over recent years. This has resulted in, arguably, a rather incoherent tax regime with different rules for (1) residents as opposed to non-residents, (2) residential property as opposed to commercial property, and (3) individuals as opposed to corporate and other “non-natural” entities.

The current UK tax regime also only applies to gains realised on direct disposals of UK residential property by (certain) non-UK residents.

The current UK tax regime, for disposals of UK real estate by non-residents, is summarised in the Annex to this bulletin.

Any comments or queries?

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From April 2019

The UK government's view is that non-UK residents have an advantage over UK residents when it comes to the taxation of UK commercial real estate, due to the fact that "unlike most other major jurisdictions" the UK does not exercise its full taxing rights as afforded by international tax rules.

In summary what is proposed is that, from April 2019, a single UK tax regime will apply for disposals of both residential and commercial UK real estate by non-residents, comprising:

- a new UK tax charge for gains on UK commercial real estate
- an extension of the existing rules for taxing gains on UK residential real estate, and
- in each case (ie for both commercial and residential UK property) an extension of the UK tax charge to gains made by non-residents on "indirect disposals" of UK "property rich" interests. This will bring within the scope of UK tax disposals by non-residents of certain companies, partnerships and unit trusts holding UK real estate.

The applicable rate of UK tax will be 19%¹ for non-resident companies caught by the new rules and, it seems, a top rate of 28% for non-resident individuals and others (or 20% in the case of commercial property).

The new tax charge(s) will in each case only apply to gains arising since April 2019 (ie property held at that date will be rebased to its current market value).

Indirect disposals

A completely new aspect of the proposal is the plan, from April 2019, to impose a UK tax charge on gains realised on disposals by non-UK residents of interests in entities that themselves hold UK real estate (so-called "indirect disposals").

This new tax charge will apply to disposals of interests in "property rich" entities. This will be the case if:

- at the time of disposal, at least 75% of the value of the interest (eg shares, partnership interests or units) disposed of is derived from UK land (whether directly or indirectly, and whether residential or commercial). The test is applied to the gross-asset value of the entity in question, using the market value of the assets at the time of disposal, and
- the non-resident making the disposal holds at least a 25% interest in the entity. Interests held by certain parties related to the non-resident will be taken into account. This test will also be met if at least a 25% interest has been held within the two years ending on the date of disposal.

Collective investment vehicles

It is intended that the new "indirect disposal" tax charge would apply equally to non-residents disposing of interests in (UK tax-exempt) real estate investment trusts (REITs) and other UK CIVs. Direct disposals of UK real estate by the (tax-exempt) UK CIV itself would continue to be exempt from UK tax.

Non-UK CIVs which, currently, escape UK tax on gains on UK real estate disposals solely by virtue of being non-UK resident, would be caught by the new direct disposal tax charge from April 2019.

1. Falling to 17% from April 2020.

July 2018 – update

On 6 July 2018 the UK government published a consultation response document (together with draft legislation, to be included in Finance Bill 2019, to provide for these changes). The majority of substantive responses received related to the complex new “indirect disposal” UK tax charge. The treatment of CIVs and exempt investors was a particular focus of concern.

It has now been confirmed by the UK government that:

- the new tax charge on indirect disposals of “property rich” entities will be relaxed slightly in that:
 - the period of “look back”, for the purposes of determining whether a non-resident holds at least a 25% interest in the entity, is reduced to 2 years prior to the date of disposal (five years under the original proposal), and
 - a more limited concept of “related” person will be used for the purposes of determining which holdings to aggregate for the purposes of the 25% interest test
- there will be a “trading” exemption within the new rules for indirect disposals of “property rich” entities, akin to the UK’s existing substantial shareholding exemption, so that a disposal of an otherwise “property rich” entity by a non-resident will not be caught by the new tax charge if the UK land held by the entity is used in the course of a trade during the 12 months prior to the disposal, and immediately after
- there will be no SDLT “seeding relief” to encourage non-residents to move their UK properties into UK structures without incurring an SDLT charge
- requests for a new, more lightly-regulated tax-transparent UK fund vehicle (again, to encourage so-called “on-shoring” of UK real estate) are not being taken forward as part of this measure
- there will be no postponement of the new rules as they apply to CIVs
- however, the UK government appears to be listening to the key concerns raised by respondents to the consultation such that:
 - transparent offshore funds (such as JPUTs and limited partnerships) will be able to elect to be treated as transparent for the purposes of the new tax rules. Non-UK investors in such funds would be treated as making a direct disposal of any UK property sold by the fund. The indirect disposal charge would not apply, and
 - certain (non-close) offshore funds will be eligible for special exemptions, provided they comply with specified reporting requirements. The fund itself, and any other non-resident entities within the structure, would be exempt from tax on gains on both direct and indirect disposals of UK real estate. Non-UK investors in the fund would be taxed on disposals of their fund interest,

for each of these measures, further discussions with stakeholders are proposed in order to refine and perfect the proposals. Given the inherent complexity involved, these are “high-level” proposals at this stage.

Annex: Disposals of UK real-estate by non-residents: current UK tax rules

Disposal type	Gain subject to UK tax?
Direct disposal of UK residential property by non-UK resident individual, trust, personal representative or “closely-held” company, or by a non-resident corporate entity subject to the annual tax on enveloped dwellings (ATED) charge	Yes
Direct disposal of UK residential property by non-UK resident “widely-held” company	No
Direct disposal of UK commercial property by non-UK resident	No
Indirect disposal of UK property, of any type, by any non-UK resident	No
Disposals of UK property, of any type, by non-UK resident if dealing in or developing land with a view to sale	Yes

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