



# CHANGES TO THE TAXATION OF UK REAL ESTATE

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The UK has, in many ways, been something of an anomaly in historically not taxing non-UK residents on gains on the disposal of UK property interests. In recent years, the Government has introduced a number of measures to extend the scope of tax on UK property: from the Annual Tax on Enveloped Dwellings in April 2013, to Non-resident Capital Gains Tax in April 2015. Considerable changes in 2019 and 2020 further extend the scope of charge on UK property, whilst also aligning some of the existing regimes. Individuals and advisors should be aware of these changes and review their circumstances to ensure existing structures continue to be effective.

### Non-Resident Capital Gains Tax (NRCGT)

The NRCGT regime was introduced to tax non-residents on gains realised on the disposal of UK residential property interests. Such gains are taxable at rates of 18% (for basic-rate taxpayers) and 28% (for higher and additional rate taxpayers), rather than the general 10% and 20% CGT rates. With effect from 6 April 2019, the scope of NRCGT has been extended to include disposals of all UK property. This includes disposals of commercial property, and residential property owned by 'diversely-held' companies (which were previously outside the scope of NRCGT). NRCGT will now also apply to 'indirect' disposals of UK property. This will apply to assets (typically shares in non-UK companies) deriving at least 75% of their value from UK property.

Indirect disposals will not be subject to NRCGT unless the non-resident had a 'substantial interest' (broadly a 25% interest in the entity at any time in the previous two years). Entities where the underlying properties were used for the purposes of a trade may also fall outside the scope of charge, subject to meeting certain conditions.

'Property-rich' Collective Investment Vehicles will, generally, be treated as companies for the purposes of NRCGT. However, they may elect to be treated as 'transparent' entities such that the underlying investors are considered to have disposed of the property interest. Gains made by non-UK resident companies on the disposal of UK property interests will be subject to Corporation Tax (currently 19%; 17% from 1 April 2020).

Where assets and properties are being brought into the scope of NRCGT for the first time, their base cost for the purposes of calculating the gain will be 'rebased' to the market value at 5 April 2019. It is advisable to obtain a contemporaneous valuation in such cases. It is possible to elect to use the original base cost in calculating the gain or loss, if this is more favourable for the taxpayer.

### Annual Tax on Enveloped Dwellings (ATED)

ATED is an annual charge imposed on companies, collective investment schemes and certain partnerships holding residential property valued at £500,000 or more. This threshold has reduced since the introduction of ATED in 2013, so more

properties now fall within the scope of the charge.

Although there are certain reliefs and exemptions from the ATED charge, many of these must be claimed by filing an ATED return. This includes properties that are rented to third parties, though care must be taken if they are not rented for the full year. In some instances, certain properties could be within the scope of both NRCGT and a separate 'ATED-related CGT' charge. From April 2019, the ATED related CGT regime has been abolished.

### Non-Resident landlords

Non-resident Landlord companies, in other words non-resident companies with UK property income, are currently subject to income tax on their profits. With effect from 1 April 2020, these companies will become subject to Corporation Tax (CT). On the surface, this is a positive change, the rate of CT from 1 April 2020 will be 17% compared to the current basic rate of income tax of 20%. However, companies must also comply with other CT obligations, such as the Corporate Interest Restriction regulations.

### Inheritance Tax (IHT)

Non-UK domiciled (and not deemed domiciled) individuals and certain non-UK resident trusts are typically only subject to IHT on UK-situs assets. Historically, they have been able to hold UK property through a non-UK incorporated company such that the property is outside the scope of IHT. With effect from 6 April 2017, shares in closely-held non-UK companies are now within the scope of IHT to the extent they derive their value from UK residential property. This means there will be a potential 40% IHT charge on the death of an individual holding such shares. In addition, loans made to acquire, enhance or maintain UK residential property (or shares in a non-UK company deriving their value from UK residential property) will also be within the scope of IHT.

Non-UK trusts holding both direct and indirect interests in UK residential property will be subject to the 'relevant property' regime, meaning potential immediate and ongoing IHT charges. In broad terms, the transfer of 'relevant property' into a

trust is subject to an immediate 20% IHT charge; the value of relevant property is subject to a charge of up to 6% on each ten-year anniversary of the trust's establishment; and a charge will apply pro rata on the distribution of relevant property to trust beneficiaries. Further, if the settlor of the trust retains an interest in the trust, the assets will remain part of their estate and an IHT charge of up to 40% will apply on their death (in addition to the ongoing trust IHT charges).

Certain debts may be deductible against the value of the property and/or shares constituting relevant property, though it should not be assumed that all debts will be allowable.

#### [Sale of Main residence](#)

The sale of an individual's main residence is currently exempt from CGT under Principal Private Residence (PPR) relief, excluding certain periods of non-occupation. In addition, the final 18-month period of ownership is also exempt provided the property has been the owner's main residence at some point during ownership. From 6 April 2020, this final period of exemption will be reduced to 9 months. This may affect individuals who have moved homes and find that it takes longer than anticipated to sell their former home. Separate rules apply for homeowners moving into residential care.

In addition, Lettings Relief (LR) provides relief of up to £40,000 for periods where an individual's current or former main residence is let to a third party. From 6 April 2020, LR will be restricted to owners who share occupancy with their tenant(s), bringing the availability of LR in line with the original policy intent when it was first introduced in 1980.

#### [Stamp duty land Tax \(SDLT\)](#)

A consultation is currently underway on a proposed 1% SDLT surcharge on properties purchased by non-UK resident individuals and 'non-natural persons' (such as trusts). It should be noted that Wales and Scotland have different regimes: Land Transaction Tax (LTT) in Wales, and Land and Buildings Transaction Tax (LBTT) in Scotland. It is important to confirm which region of the UK is in question, as the regimes are similar but not identical.

#### [ADMINISTRATION](#)

The deadline for filing a SDLT return in England and Northern Ireland was shortened to 14 days from 1 March 2019. For all instances of a NRCGT event, both the filing of a NRCGT return and payment on account of tax must be made within 30 days of completion. This removes the ability to defer the payment of NRCGT until submitting a tax return, for those already in the Self Assessment regime.

From 6 April 2020, the requirement to report and pay CGT within 30 days of completion will be extended to the disposal of UK residential property by UK residents. Although this should not affect the disposal of main residences (where PPR available in full), this is likely to create a considerably larger burden for those with more than one home and landlords.

#### [Next Steps](#)

It is vital that anyone holding UK real estate understands their position and whether the extensive changes will impact them. Although certain groups are more likely to see an effect (namely non-UK domiciled and/or non-UK resident individuals, non-UK resident companies and non-UK resident trusts), the changes can have a much wider reach. Where it is identified that current holding structures are no longer tax-efficient, it may be possible to restructure. However, this may come with CGT, IHT, SDLT and other tax and legal considerations and advice must be sought accordingly. Trustees and Corporate Service Providers should be aware of any structures under their administration that hold UK property interests and understand what the impact is. In particular, trusts approaching a ten year anniversary should be reviewed in advance.

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