

# Changes to the taxation of UK commercial property gains

Who is affected and how will the new rules work?



With effect from 6 April 2019, the scope of UK tax on capital gains was extended to cover disposals of non-residential (i.e. commercial) UK property and disposals of shares in UK property rich entities by non-resident companies, individuals and trusts.

## What's new?

Traditionally, non-UK residents (companies, individuals and trusts) did not pay UK tax when they made gains on the disposal of UK real estate.

Things started to change in 2013 when non-resident companies selling high value UK residential property became subject to Capital Gains Tax (CGT) at a rate of 28%. Further change came in 2015 when the Non-Resident Capital Gains Tax (NRCGT) charge made non-UK residents liable to UK tax when they made gains on the disposal of UK residential property.

“

**There are two exemptions from the charge in respect to holdings in property rich companies.**

At the time, commercial properties were not in the scope of the tax, but, as widely predicted, the rules now cover gains on UK commercial properties as well as the disposal of shares that derive their value from UK property.

## Who is likely to be affected by the rules?

Non-UK resident individuals, companies and trusts that hold UK real estate either directly or indirectly (for example through a company) will be caught by these rules.

There are certain double tax treaties which prevent the UK from taxing gains realised by non-residents on the disposal of shares which derive their value from UK land. Residents of these countries may therefore not be in the scope of the new tax.

## How will the rules work?

If you or your company already own UK commercial property that is now being brought in to the charge to tax, the property will be 'rebased' to reflect its market value at 5 April 2019.

This means that when you or your company sell the property you will not pay UK tax on the part of the gain that accrued up to 5 April 2019. There is also a rebasing for the gain you make on selling shares in a property rich company.

When an individual or a trust sells UK property or property rich company shares, the individual or trustees will need to calculate the gain and file an online tax return within 30 days of the date of completion. The tax payment is due at the same time. Non-UK resident individuals will pay tax at CGT rates (either 10% or 20% depending on the level of their taxable income). Trusts will be taxed at 20%.

Companies file returns under the corporation tax rules. These rules allow companies longer deadlines than individuals and trusts for both filing their tax returns and paying the tax, but non-UK companies are likely to need to register for corporation tax within three months of the disposal date. The corporation tax is currently 19% and is expected to fall to 17% from 1 April 2020.

In addition to gains on the direct disposal of UK property, gains on indirect disposals of UK property may also be taxable. This would apply where, rather than the non-resident company disposing of the UK property itself, the shareholder of that non-resident company instead disposes of shares.

Where these are shares in a 'property rich' company, the shareholder will face a UK tax charge.

A property rich company for these purposes is one that derives more than 75% of its gross asset value from UK property (which includes any residential, commercial or agricultural property).

There are two exemptions from the charge in respect to holdings in property rich companies. The exemptions to the charge generally apply to investors who have less than a 25% interest in a property rich company (including the interest of any connected parties) and the charge will not extend to property that is used in a trade (for example a shop). There are also specific rules that apply to property Funds.

### What should I do now?

The new rules apply for gains made by individuals, trusts and companies on the disposal of UK commercial property on or after 6 April 2019. The ability to rebase the property means gains arising before that date will not be subject to UK tax.

It is the taxpayers' responsibility to value the property accurately, and if not already done so, you should undertake a professional valuation to document the value of the property at 5 April 2019 as soon as possible. These records should be retained and can be used to support the chargeable gain calculation.

As well as documenting the rebased cost of the property, if the new rules are likely to affect you we recommend that you review your records and ensure you retain details of all the property acquisition and enhancement costs. This is vital given the limited time allowed to calculate and pay the tax.

Where the UK property is owned by a non-UK company, we recommend valuing all the properties (including non-UK properties) to assess whether the company may be property rich and therefore within the scope of the new rules.

### What next?

The changes made to the taxation of UK property since 2013 have been immense, bringing a greater number of properties in to the scope of UK tax, targeting perceived abuse, as well as overhauling the taxation of buy-to-let properties.



“

The new rules apply for gains made by individuals, trusts and companies on the disposal of UK commercial property on or after 6 April 2019.

There are more changes to come. With effect from 6 April 2020, non-UK resident companies that carry on a UK property rental business will pay UK corporation tax on their profits, rather than paying Income Tax as they do under the current 'non-resident landlord' scheme.

Whilst as a headline this may look like a positive change for the tax payer, with the rate of UK corporation tax lower than the rate of UK Income Tax, you should not be fooled. Additional provisions and restrictions will apply to non-resident landlords under the corporation tax regime that did not apply under the Income Tax regime. The most notable of these is the corporate interest restriction rules.



## How we can help

We have a multi-disciplinary property tax team with deep commercial experience across the sector. We can assist with reviewing property portfolios and understanding how the extension to UK tax will impact you or your businesses.

If you would like to discuss this in more detail, then please get in touch with your usual Blick Rothenberg contact or one of the individuals listed in the footer of this document who will be able to assist you further.

To view our latest publication on Changes to the taxation of UK property income of non-resident companies, please click [here](#).



**Genevieve Morris**

Partner  
Corporate Tax

**I** +44 (0)20 7544 8815

**E** [genevieve.morris@blickrothenberg.com](mailto:genevieve.morris@blickrothenberg.com)



**Caroline Le Jeune**

Partner  
Private Client

**I** +44 (0)20 7544 8986

**E** [caroline.lejeune@blickrothenberg.com](mailto:caroline.lejeune@blickrothenberg.com)

Independent  
Member of

**BKR**  
INTERNATIONAL

**Blick  
Rothenberg**

a CogitalGroup company

16 Great Queen Street  
Covent Garden  
London WC2B 5AH

**I** +44 (0)20 7486 0111  
**E** [email@blickrothenberg.com](mailto:email@blickrothenberg.com)  
**W** [blickrothenberg.com](http://blickrothenberg.com)