



Commercial property and non-residents



Taxing gains made by non-residents on UK immovable property: A significant change to the taxation of non-residents owning all types of UK real property is to be introduced with effect from April 2019.

Currently, capital gains on UK property are taxed in only a limited set of circumstances. These include gains made on the increase in value of directly-held residential property from April 2015 and the disposal of UK property used in the trade of a foreign person operating through a UK branch of their overseas business.

Gains made on property development activities can be charged to Income Tax for some non-residents who either provide such opportunities or who are party to them, though these days such activities will often be operated through a UK limited company for both taxation and non-taxation reasons.

The Government proposes that from April 2019 almost all gains on the disposal of UK real property will come within the scope of UK taxation. This will expand the base of the Capital Gains Tax ("CGT") and Corporation Tax regimes.

The new proposals are now open for consultation, with a closing date for comments of 16 February 2018. The consultation document gives an indication of what the Government wants to achieve:

- Capital gains on all categories of UK property will be charged to tax. Therefore, this will now include all forms of commercial property: buildings let to government bodies, retail, offices, factories, leisure land, agricultural land and forestry.
- Both direct and indirect interests in UK property will be within the charge. This, therefore, brings shares in residential property holding companies within the charge to tax in addition to direct interests in residential property.

- A disposal of an indirect interest will, for most non-resident investors, occur when shares in a company holding UK property are sold, or are gifted as part of family succession. However, interests that are held in partnerships, trusts, unit trusts or UK Real Estate Investment Trusts ("REITs") by way of options and other rights over property may also be taxed.
- Rebasing will apply so that generally on a disposal non-resident individuals and trustees will be exposed on gains that have accrued from 6 April 2019, while persons within the charge to Corporation Tax will be exposed on gains accrued from 1 April 2019. Rebasing will not apply where a person sells a direct interest in real property at an overall real loss. For indirect interests rebasing is intended to be automatic.
- For those investors who already hold direct interests in UK residential property and who are therefore already in the existing non-resident CGT regime, the April 2015 rebasing date (or actual cost if later) will not change.
- Exemptions are proposed for qualifying investors such as pension schemes and for Qualifying Institutional Investors.
- For an indirect interest to be caught, the entity disposed of must be 'property rich'. This means it must derive 75% or more of its then gross value from UK land, including the value held within its own indirect interests (e.g. in its subsidiaries). Non-UK land will not count toward the 75% test and neither will non-property assets.



- Further, the person making the disposal needs to have only a 25% interest in the investment to come within the new regime. This is the case irrespective of the size of the interest that is the subject of any particular disposal. The interests of 'related parties' will be included and will be modelled on broad rules to include a commercial group of entities with a 'common object' in relation to a UK property investment. It is proposed that the test will require the person making the disposal to look back and determine if the 25% interest test was met at any time in the previous five years. This 'look back' will therefore be to a point as early as 1 April 2014 in the case of non-resident companies.
- There is to be no 'motive test'. This means that even where the ownership of UK property has been structured indirectly for any commercial reason, gains on disposal will still be taxed.
- In the period up to the date the legislation has statutory effect 'anti-forestalling' rules will apply. These will prevent some arrangements entered into on or after 22 November 2017 from applying, where the effect of those arrangements is to shelter capital gains on the disposal of an indirect interest in UK property using the provisions of a double tax treaty.
- There will be specific reporting and payment regimes that will depend on whether the person disposing of their interest is already within either personal or corporate self-assessment. Payment of any tax may be due within 30 days. In the cases of gifts or consideration between connected parties, supporting valuations will be necessary.

While we can understand the Government's attempt to align the tax treatment of property gains between UK resident and non-resident investors, we hope the consultation process results in rules which are clear and which promote rather than deter investment in the UK. This leads to growth and income from taxation in other ways.

This is so important at the present time, not only because of the uncertainties yet to be resolved as the UK leaves the EU, but also to fulfil the Government's aims with infrastructure investments such as HS2, the Northern Powerhouse and the Midlands Engine.

We predict there will be a substantial number of responses from across the whole spectrum of the property industry for these reasons. In fact, we believe HM Revenue & Customs will be overwhelmed with the response. We hope so.

And we hope that more than ever the responses are given due consideration and, if necessary, lead to further engagement with the UK property sector.



Frank Nash
Partner, Head of Property group

+44 (0)20 7544 8930
frank.nash@blickrothenberg.com

Blick Rothenberg
16 Great Queen Street
Covent Garden
London WC2B 5AH



Caroline Le Jeune
Partner, Private client

+44 (0)20 7544 8930
caroline.lejeune@blickrothenberg.com

+44 (0)20 7486 8986
email@blickrothenberg.com

©December 2017. Blick Rothenberg Limited. All rights reserved. While we have taken every care to ensure that the information in this publication is correct, it has been prepared for general information purposes only for clients and contacts of Blick Rothenberg and is not intended to amount to advice on which you should rely. Blick Rothenberg Audit LLP is authorised and regulated by the Financial Conduct Authority to carry on investment business and consumer credit related activity.