Accountants & business advisers

Tax Insights

UK property – proposed changes to the taxation of non-resident investors

The UK government wants to level the playing field between UK and non-UK residents on the taxation of disposals of UK property. All non-resident investors will be affected – so what could the proposals mean for you?

Following recent consultation by the UK government, draft legislation has been published in respect of proposed changes to the taxation of gains and income of non-resident investors in UK property.

The proposed changes are:

- All non-resident investors will be subject to tax on gains made on direct disposals of UK property unless they are specifically exempt (for example, if they are held in an overseas pension scheme) with effect from April 2019. This widens existing provisions to include UK commercial and residential property.
- Indirect disposals of UK land by non-resident investors will be taxable with effect from April 2019. This will apply when there is a sale of an entity held by the non-resident that derives 75% or more of its gross asset value from UK land.
- Non-resident companies that carry on a UK property business or have other property income will be charged to Corporation Tax with effect from April 2020. This will represent a change from the current treatment whereby such companies are subject to Income Tax.

We examine these changes in more detail opposite.

Direct and indirect disposals of property

- Gains previously not taxable, such as on commercial property and on property-rich companies, will be subject to rebasing as at April 2019, such that only gains accruing after that date will be taxable. An alternative calculation will be available based on time apportioned original cost, if more beneficial. However, for indirect disposals, a loss calculated on the alternative method will not be allowable.
- Existing exemptions and reliefs will apply to non-residents as they do for residents. This will include the Annual Capital Gains Tax exempt amount, the Substantial Shareholdings Exemption, and the intra group transfer rules, which permit transfers between group companies without triggering a gain or loss.
- Indirect disposals will be subject to a de minimis holding of 25%, with a 'look back' period of two years and a trading exemption where land is used in a trade.
- New reporting requirements will be brought in for capital gains, with the general rule being that a return in respect of the disposal must be delivered to HMRC within a payment window of 30 days following completion of the disposal, accompanied by a payment on account.
- The draft legislation does not address how the new rules will apply to collective investment vehicles investing in UK real estate. Additional rules will be published in the coming months to address the complexities inherent in such structures.

Changes to Corporation Tax for non-resident investors

- The change to Corporation Tax will reduce the tax liability from the present Income Tax rate of 20% to the expected Corporation Tax rate of 17%.
- The introduction of Corporation Tax will mean that the corporate interest restrictions will apply, which will limit the deductibility of interest for larger corporates.
- Pre-change losses will be able to be carried forward and offset against future profits of the property business.

What does this mean?

The proposals represent a significant change to the taxation of UK property, which will affect all non-resident investors.

The changes represent a further significant step in the widening of the scope of UK taxation on UK property gains and income received by non-residents. This follows a number of recently enacted changes in relation to the taxation of gains made on residential property, gains made by offshore developers in respect of UK land, and the inclusion of residential property owned by non-resident companies within the scope of UK Inheritance Tax.

There are many complexities associated with the proposed changes, particularly with regard to multi-layered groups and collective investment funds. Expert advice will be more important than ever in making sure that you remain compliant with UK tax legislation and these changes once they are enacted, and pay the right amount of tax, both in the UK and internationally.

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