

Disposals of UK property by non-residents

Taxation of gains



Gains on the disposal of all UK-situated real property owned by non-UK residents are within the scope of UK tax, as are gains on the sale of some interests in 'property rich' companies.

Gains on disposals of UK residential property by non-UK residents have been subject to capital gains tax (CGT) since 6 April 2015, and in some cases from April 2013. A single regime covering both residential and commercial property was introduced from 6 April 2019.

Non-resident companies are subject to corporation tax on gains on disposals of UK property. Individuals and trustees are liable to CGT.

Non-residential real property includes:

- woodland, farmlands and farm buildings; and
- commercial buildings such as factories, offices and garages.

Indirect holdings

The new regime extends to indirect disposals by non-residents, through sales of shares in any 'property rich' company. A company is property rich if 75% or more of its gross asset value derives from UK property.

A non-resident investor who holds, or who has held in the last two years, a 25% or greater interest in a property rich company will be taxed on gains arising on disposal of the shares. The rules are complex. Rights in the company held by some 'connected persons' at the date of disposal or within the prior two years will be taken into account when calculating the 25% test.

An exemption applies on the sale of shares where all, or almost all, of the UK property is used or was acquired for the use in the course of a qualifying trade.

There are special rules for 'property rich' collective investment vehicles, such as Real Estate Investment Trusts (REITs), where there is no minimum holding for the rules to apply.

Double tax relief

Relief from tax on sales of shares in property rich companies may be available under some Double Taxation Agreements (DTAs). Most DTAs however do allow the UK to charge tax on gains where UK property is held directly, although a credit should be available against any foreign tax payable on the same gain. Both local and UK advice should always be sought when considering a sale of UK property.

An anti-forestalling rule denies DTA benefits to non-residents who enter into any arrangements or restructuring that seek to benefit from such a DTA.

Rebasing

The new rules for non-residential UK property only apply to increases in value from 5 April 2019, of the property itself for direct disposals and of the shares for indirect disposals. The existing 5 April 2015 rebasing continues to apply to sales of UK residential property.

The taxpayer can elect to calculate the gain using the original cost. If an election is made and a loss arises on an indirect disposal, this is not an allowable loss.

Administration

Disposals of direct or indirect interests in UK land by non-resident individuals and trustees need to be reported to HMRC. A return must be filed within 30 days of completion, and a payment of tax on account needs to be made at the same time. The reporting requirement applies even if there is no gain although some transfers, such as those to a spouse, do not require any reporting.

The disposal must also be reported on the end of year tax return where one is required or issued, and any correction to the amounts paid on account can be included in the balancing payment.

Disposals by non-resident companies fall within the corporation tax reporting regime, with tax payable at 19%.

Companies not otherwise registered for corporation tax must register within three months of the disposal. The earliest the tax will be due is 3 months and 14 days from the date of disposal. In many cases it will be the usual corporation tax payment deadline of 9 months and 1 day after the end of the accounting period. Companies may be able to claim a limited amount of indexation relief where the property was owned before 31 December 2017.

Conclusion

The application of UK taxes to UK property has been significantly widened over the last few years. As such, all non-resident persons holding UK real estate, either directly or through structures, should discuss their future plans for their UK property with us so that we can advise on the potential impact of these rules.

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