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KPMG in the Channel Islands

Taxing gains on UK immovable property

This document summarises the changes to UK tax impacting non-UK resident property investors from **April 2019.**

Background

From **April 2015**, most non-UK residents disposing of UK residential property have been subject to non-resident capital gains tax ("NRCGT"). Disposals by non-UK residents of UK non-residential property and indirect holdings of UK property, have not previously been subject to UK tax.

From **6 April 2019**, the scope of UK tax was expanded so that non-UK residents will typically be subject to UK tax on the following:

— Disposal of direct interests in all UK land & real estate; and
— Disposal of indirect interests in entities defined as UK "property" rich.

ATED-related CGT has been abolished with effect from 6 April 2019.

Indirect disposal – property rich entities

An entity is 'property rich' where it derives at least 75% of its value from UK land and real estate. A disposal of an interest in such an entity is subject to UK tax where the investor holds a substantial interest in that entity. A substantial interest is generally defined as 25% at any time in the 2 years prior to disposal, however in some cases 'insignificant periods' of ownership can be ignored for this purpose. Note this de minimis does not apply to CIVs and to certain companies that have invested in CIVs.

Filing practicalities

Individuals and trusts

In most cases, non-resident individuals will be required to file a capital gains tax return with HMRC and pay any arising tax liability within 30 days of completing the sale. Filing is generally required irrespective of whether a taxable gain is realised.

Companies

From **6 April 2019**, any gain arising from a disposal of UK property by a non-resident company will be subject to UK corporation tax.

Where a company is already in scope of corporation tax, for example if already reporting UK rental profits, then the company will include the chargeable gain in the normal CT return. If the company is not currently within the scope of UK corporation tax it will be required to do the following on disposal:

— Register for corporation tax within 3 months
— File an iXBRL tagged corporation tax return and supporting tax computation (usually within 12 months)
— Pay corporation tax on the gain (usually due 9 months and 1 day from disposal, however in certain cases payment may be due earlier).

Where the company has not made a tax adjusted chargeable gain, it should not be necessary to register and file a return unless the company intends to carry forward any loss, or make an election to calculate the gain using an alternative basis.

Event	Rate
Direct or taxable indirect disposal by a non-resident company	19%
Disposal of a non-residential property or an indirect disposal by an individual	10% or 20%
Disposal of a non-residential property or an indirect disposal by a trust	20%
Disposal of a residential property by an individual	18% or 28%
Disposal of a residential property by a trust	28%

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Rebasing

Residential properties generally continue to be 'rebased' **to 5 April 2015** in line with the 'old' NRCGT rules. The base cost for commercial properties, undeveloped UK land and for shares in 'indirect disposals' are generally rebased to **5 April 2019**.

It is possible to make a historic cost election, and for residential properties it is possible to time-apportion the historical gain.

Exemptions

There are various exemptions to the tax charge, including:

i. for properties used as part of an active trade;
ii. certain substantial shareholdings exemptions; and
iii. certain disposals involving qualifying investors.

How can KPMG help?

— Advising on the impact of the changes to individuals and structures (including trusts and companies)

— Reporting of disposals for individuals or entities including registration and filing of corporation tax returns

— Advising CIV's in respect of making appropriate elections to HMRC and undertaking all necessary reporting on behalf of the CIV and its investors

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