

UK Immovable Property Gains By Non-Residents

(Lecture P1057 – 17.17 minutes)

This consultation was published on 22 November 2017 and closes on 16 February 2018.

The objectives of the changes being consulted on are to:

- More closely align the tax treatment of NR owners of UK immovable property with that of UK residents; and
- Reduce the incentive for multinational groups to hold UK property through offshore structures, often in low tax or no tax jurisdictions.

The rules will create a single regime for both residential and commercial property, thereby extending the rules for residential property to:

- indirect sales, and
- disposals made by widely-held companies.

Indirect disposal rules will apply where an entity is 'property rich':

- (broadly) where 75% or more of its gross asset value at disposal is represented by UK immovable property; and
- the person holds, or has held at some point within the five years prior to the disposal, an interest of > 25% in the entity.

Direct disposals

April 2015 will remain the rebasing point for direct disposals of interests in residential property for those already in the NRCGT regime. For non-residential UK property, the rebasing point will be April 2019.

For mixed-use property (one that consists partly, but not exclusively, of one or more dwellings) a different rebasing point will be needed for the residential and non-residential elements.

Where a property has changed use between residential and non-residential over the ownership period since April 2015, the calculations for the apportioned elements of the gain for the different periods will use different rebasing points.

- Normal tax rates will apply;
- Losses and gains arising to non-resident companies will be treated in the same way as other capital losses and gains for corporation tax, in terms of available relief;
- For individuals, no distinction between gains/losses arising on UK residential and non-residential property;
- Rollover relief available (subject to normal conditions).

Indirect disposals

A non-resident will be chargeable in respect of a disposal of an entity that substantially derives its value from UK immovable property, whether commercial or residential property. Any gain will be computed by reference to the gain on the interest in the entity that derives its value from land, rather than by reference to any increase in value of the land itself.

Rebasing to April 2019 will be the only acceptable method of computation for indirect disposals.

The following two tests must be performed at the date of disposal, to establish whether a disposal is in scope:

- Is the entity being disposed of “property rich”?; and
- Does the non-resident hold a 25% or greater interest in the entity, or have they held 25% or more at some point in the five years ending on that date?

If the conditions are met then the disposal will be in scope.

Although the new charge will apply only to disposals after April 2019, this test will take into account ownership before that time, to determine if the 25% threshold is met.

Any interests held by related parties to the non-resident will also be taken into account when calculating whether the 25% test is met. This will use the connected party test (within the meaning in s.1122 CTA 2010), supplemented with ‘acting together’ rules modelled on those in the corporate interest restriction rules (s. 465(3) of TIOPA 2010).

The ‘property richness test’ rules will apply only where, at the time of disposal, directly or indirectly, >75% of the value of the asset disposed of derives from UK land. The test will be made on the gross asset value of the entity, so not including liabilities such as loan finance. It will use the market value of the assets at the time of disposal.

For the purposes of establishing whether this 75% test is met, all UK land (both residential and non-residential) held in the envelope entity will be taken into account. Non-UK land will not count toward the 75%.

The new rules on ‘property deriving its value from land’ will be modelled on s.356OR CTA 2010. Where it is necessary to trace value, the rules will allow this to be done through layers of ownership, or through entities, trusts or other arrangements.

Compliance

For transactions within these new rules, the process will be as for the existing regime for NRCGT, for both direct and indirect, residential and non-residential disposals.

For transactions falling within the CT regime, the non-resident will be required to

- register for CTSA with HMRC, and
- report the gain or loss within that framework, and
- pay any tax under the normal CT rules.

Again this applies to both direct and indirect, residential and non-residential disposals.

If not already within CTSA, the chargeable accounting period will be one day long, beginning and ending on the date of disposal.

For indirect disposals, certain advisors who are aware of the conclusion of the transaction are likely to have to report. This will be where the advisor:

- is based in the UK
- has received fees for advice or services relating to a transaction that could fall within these rules
- has reason to believe, in a business capacity, that a contract for disposal of UK property has been concluded that could fall within these rules
- cannot reasonably satisfy themselves that the transaction has been reported to HMRC.

The time limit for third-party reporting will be 60 days, giving advisors time (if appropriate) to get evidence from the disposer that the disposal has already been reported.

Other matters

There are various other matters covered in the thirty-three page document, including:

- The impact of tax treaties;
- Possible abolition of the ATED-related CGT charge from April 2019 to be replaced by the CT charge under the new rules;
- Ownership by and through CIVs;
- Anti-forestalling rules (dealt with in a separate technical note), largely aimed at preventing 'treaty shopping'.

Contributed by Kevin Read