



HONG KONG TAX ALERT

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Tax Alert – UK to tax gains made by non-residents on the disposal of UK immovable property from April 2019

Summary

On 22 November 2017, the UK Government announced that all gains made by non-residents on the disposal of all types of UK real estate would be taxed from April 2019.

Amongst other proposals, the UK Budget has also covered the taxation of non-resident companies consultation, removal of indexation allowance and interest deductibility restriction rules, hybrid mismatch rules and stamp duty land tax.

Background

The UK Budget on 22 November signalled a major change to the tax treatment of UK property investment, with the announcement that the capital gains tax exemption for non-residents will be abolished from April 2019. This may well have a significant effect on investment into UK real estate by non-residents.

Taxing gains made by non-residents on UK immovable property

The Government has announced that it intends to tax gains made by non-residents on the disposal of all types of UK real estate from April 2019. A consultation document has been published setting out details of how the rules are expected to apply.

Currently, only gains made by non-residents on the disposal of residential property are subject to UK tax although there is an exemption for certain widely-held non-resident companies. The new rules will create a single regime for the disposal of both residential and commercial real estate and will remove the current exemption for widely-held non-resident companies. We anticipate that the widely-marketed scheme exemption will also be removed although this is not specifically mentioned in the consultation document.

In addition, the new rules will extend to indirect disposals of “property rich” entities such as companies, partnerships and property unit trusts. Broadly, a non-resident investor holding a 25% or greater interest in an entity that derives 75% or more of its gross asset value from UK real estate will also be within the scope of the new rules. The rules could also apply to an interest in settled property deriving its value directly or indirectly from UK land and to any option, consent or embargo affecting the disposition of UK land. The indirect disposal

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rule will also apply to a non-resident investor who holds 25% or more of the shares in a UK-REIT.

Any interests held by related parties to the non-resident at the date of disposal or within the prior five years will be taken into account when calculating whether the 25% test is met.

HMRC acknowledge that relief from tax on indirect disposals may be available under certain double tax treaties where those treaties do not contain a securitised land provision. Such treaties include Luxembourg but not Isle of Man, Jersey, Guernsey or Netherlands. However, an anti-avoidance rule has been introduced to deny treaty benefits to non-residents who enter into any arrangements or restructuring on or after 22 November 2017 with a view to benefitting from such double tax treaties.

The new rules will apply only to gains attributable to changes in value from 1 April 2019 (for companies) and 6 April 2019 (for other persons). April 2019 will therefore be a rebasing point for widely-held non-resident companies on all disposals of UK real estate and for all persons on all indirect disposals.

Rollover relief will be available to allow non-residents to defer gains on the disposal of certain business assets used for trade purposes. However, we would expect that this may be of limited use in practice.

Sovereign immune investors, registered pension schemes and overseas pension schemes will retain their existing tax benefits but could be indirectly affected depending on the nature of their holding structure.

Qualifying institutional investors may also benefit from the extended Substantial Shareholding Exemption rules that apply to the disposal of property rich UK companies or groups of companies.

Removal of indexation allowance

The calculation of indexation allowance will be changed so that for disposals of assets on or after 1 January 2018, indexation allowance will be calculated using the Retail Price Index or factor for December 2017, irrespective of the date of disposal of the asset.

Taxation of non-resident companies consultation

Following the consultation earlier this year the Government has announced that it will legislate so that non-UK resident companies that carry on a UK property business or have other UK property income will be charged to corporation tax, rather than being charged to income tax as at present. A non-UK resident company that has chargeable gains on the disposal of UK residential property will also be charged to corporation tax, instead of capital gains tax as at present.

The government plans to publish draft legislation for consultation in summer 2018. The change will have effect on and after 6 April 2020. As a consequence it is expected that the corporate interest restriction rules (BEPS 4), limitations on loss carry-forwards and anti-hybrid rules (BEPS 2) shouldn't apply to NRLs until April 2020.

Following the announcement in today's Budget that all non-residents will be subject to capital gains tax in respect of disposals of all UK real estate from

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April 2019, this means that gains that arise to non-resident companies on the disposal of UK property will move from capital gains tax to corporation tax from April 2020. This will impact compliance requirements and certain deductions but it is important to note that given the anticipated reduction in corporate tax rate, this may not give rise to a significantly higher effective rate of tax on rental income or residential property gains.

Stamp Duty Land Tax

In a bid to help more first-time buyers onto the housing ladder, the Chancellor has introduced a relief effectively increasing the nil-rate threshold from £125,000 to £300,000 for first-time buyers acquiring properties valued up to £500,000. The relief will apply to all purchases with an effective date on or after 22 November 2017. A first-time buyer is defined as someone who has never owned a freehold or leasehold interest in a dwelling before, and who is purchasing their only or main residence. For joint purchasers, the relief will only apply if both purchasers meet the description of a first-time buyer.

Amendments have been introduced to the higher residential rates of SDLT which apply to purchase of second homes and buy-to-let properties (the 'surcharge'). The changes correct some anomalies that were present in the legislation since its introduction, and tighten the anti-avoidance provisions. As to the latter, where previously the disposal of a small share in your home to your spouse would arguably have allowed you to fit within the replacement of main dwelling exemption on a future purchase, from 22 November 2017 the exemption will only apply if the whole of your property is disposed of, and the disposal is made to someone other than your spouse or civil partner.

Other

Interest deductibility restriction rules

A number of changes have been proposed in respect of the interest deductibility rules (BEPS Action 4). Some of these changes will be effective from 1 April 2017, others will be effective on or after 1 January 2018.

Hybrid mismatch rules

A number of technical changes to the hybrid mismatch rules will be introduced in the 2017/18 Finance Bill.

For further details, please talk to your usual KPMG advisor or see the following link: <https://home.kpmg.com/uk/en/home/insights/2017/10/autumn-budget-2017.html>

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