



Offshore corporates owning UK property

10 November 2022



01

Introduction

Derek Scott

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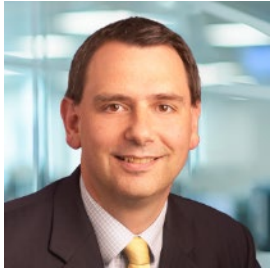


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With you today



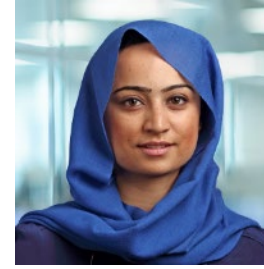
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Paul Beale
**Tax Director & Head
of Family Office &
Private Clients,**
Crown Dependencies

Agenda

- 01** Introduction – Derek Scott
- 02** HMRC Campaign Letters - Isobel Clift
- 03** The rules – Hannah Keens & Mariam Moi
- 04** How can we help? – Paul Beale
- 05** Questions

02

HMRC Campaign Letters

Isobel Clift

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Nudge letters – NRCGT

**HM Revenue
& Customs**

Indy and Small Business Compliance
HM Revenue and Customs
BX9 1LE

[company name]
[address]

Phone 03000 180382
Monday to Thursday, 9am to 5pm
Friday, 9am to 4.30pm

Email offshorecompaniesnrcgtinf@hmrc.gov.uk

Web www.gov.uk

Date [date]
Our Ref [Caselaw reference]

Dear Sir or Madam

Disposal of interest in UK residential property

Our records show that [company name] disposed of an interest in UK property on [date of disposal]. You may need to make a disclosure about the disposal.

What you need to do

We need to check that you have told us about all the tax the company has to pay in the UK. If you need to make a disclosure, please fill in the enclosed notice of intention and certificate.

If you think you do not need to make a disclosure, you need to tell us why. To do this please fill in the enclosed certificate.

Please send the notice of intention and/or completed certificate to either:

- offshorecompaniesnrcgtinf@hmrc.gov.uk
- the address at the top of the letter

You must do this by [date + 40 days], using reference [Caselaw reference].

If you email us, please make sure you have read and understood the risks mentioned in the enclosed factsheet DSC1, 'Corresponding with HMRC by email guidance'.

If you are using an agent, please check that they have the company's written approval and share that with us.

Non-Resident Capital Gains Tax (NRCGT)

Between 6 April 2015 and 5 April 2019 non-UK resident companies were required to file an NRCGT return if they disposed of an interest in UK residential property.

We have not been able to find a return about the company's disposal.

If the company should have sent us an NRCGT return, you must make a disclosure.

For more information about Non-Resident Capital Gains Tax, go to **GOV.UK** and search for 'NRCGT'.

What you may also need to consider

You will also need to consider if the company owes any other tax that may have been due in the past. This could include:

- tax on rents received
- any potential charge under the Annual Tax on Enveloped Dwellings scheme (ATED)
- ATED related Capital Gains Tax

CompC1NRCGTMM

1

HMRC 09 22

- a charge to tax generated under the transactions in land rules at Part 8ZB CTA 2010 and Part 9A ITA 2007
- a charge to tax if the company carried or carries on a trade of dealing in or developing UK land under S5 & 5B CTA 2009
- penalties – we have included factsheets to help you

For properties purchased before April 2015 by the company, we will need to consider if any part of the gain may relate to UK-resident participants in the company under S13 TCGA 1992 (these rules have since been relocated to S3 TCGA 1992). Please ask UK-resident participants in the company to make sure their tax affairs are updated if S13 could apply.

For guidance, go to **GOV.UK** and search for 'NRCGT attribution of gains'.

This is a complex area of tax and we recommend getting professional tax advice.

If you do not give us the right information or we do not hear from you

We are giving you the chance to tell us about the company's tax position. If we later find that you have not told us everything, we will view this very seriously.

If we do not hear from you by [date + 40 days], we may make an assessment of what we believe the company owes. If suitable, we may open an investigation and consider charging additional penalties.

We charge interest on late tax payments under Section 101 of the Finance Act 2009. Paying any tax you owe will reduce the amount of interest you will have to pay.

If you've committed tax fraud and want to tell us

Please let us know by filling in a CDF1 form. For more information, go to **GOV.UK** and search for 'Contractual Disclosure Facility'.

If you chose to use the Contractual Disclosure Facility, you must let us know that you received this letter during the disclosure process. You can do this by completing and returning the certificate enclosed.

How to authorise an agent

If you want us to deal with someone else on your behalf, you need to give us your authority.

To authorise an agent, for example, an accountant or a tax adviser, you need to fill in the form that most suits your needs.

Form COMP1A

Use this form to temporarily authorise us to deal with an agent about the disclosure, or a compliance check that we have made as a result of the disclosure only.

To get a copy of form COMP1A, go to **GOV.UK** and search for 'Comp1A' and click on 'Authorise HMRC to temporarily deal with your tax advisor'. Your agent can help you with completing the form. You will need to return this form to the address shown at the top of this letter. Please note that we will not be using the Digital Disclosure Service for this Disclosure


Form ATED1

Use this form to allow HMRC to deal with your agent for ATED and ATED related CGT. To get a copy of form ATED1, go to **GOV.UK** and search for 'ATED1'.

More information and support

Any disclosure you make in response to this letter will be processed manually and not by the Worldwide Disclosure Facility (WDF). You will need to give the same information as you would with the WDF and the steps to follow are the same. For more information about the steps, go to **GOV.UK** and search 'WDF'.

Nudge letters – ATED/Rental income

**HM Revenue
& Customs**

Indv and Small Business Compliance
HM Revenue and Customs
BX9 1LE

[company name]
[address]

Phone 03000 180382
Monday to Thursday, 9am to 5pm
Friday, 9am to 4.30pm

Email offshorecompaniesnrltdnrl@hmrc.gov.uk

Web www.gov.uk

Date [date]
Our Ref [Caseflow reference]

Disclosure for Annual Tax on Enveloped Dwellings/Non-Resident Landlord liabilities

UK property of [company name]

Our records show that [company name] owns UK property. This means you may need to disclose:

- liability to Annual Tax on Enveloped Dwellings
- rental income

What you need to do

We need to check that you have told us about all the tax the company has to pay in the UK. If you need to make a disclosure, please fill in the enclosed notice of intention and certificate.

If you think you do not need to make a disclosure, you need to tell us why. To do this please fill in the enclosed certificate.

Please send the completed notice of intention and/or certificate to either:

- offshorecompaniesnrltdnrl@hmrc.gov.uk
- the address at the top of the letter

You must do this by [date + 40 days], using reference [Caseflow reference].

If you email us, please make sure you have read and understood the risks mentioned in the enclosed factsheet DSC1, 'Corresponding with HMRC by email guidance'.

If you are using an agent, please check that they have the company's written approval and share that with us.

Annual Tax on Enveloped Dwellings (ATED)

ATED is a tax payable mainly by companies that own UK residential property valued at more than £500,000. As the company is the owner of a UK residential property, we believe it should have submitted an ATED return. However, we have not been able to find an ATED record for the company.

If the company should have filed ATED returns, you must make a disclosure.

For 2022-23 onwards, the company will need to submit ATED returns. For guidance, go to **GOV.UK** and search 'ATED'.

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If the company has received rental income as a non-resident landlord

We cannot find a record of the company registering for Income Tax.

If the company has received rental income for any period before 6 April 2020 that has not been disclosed, you must make a disclosure.

From 6 April 2020 the company must account for any liability under the Corporation Tax rules and register accordingly. For more guidance about being a non-resident corporate landlord, go to **GOV.UK** and search 'Paying Corporation Tax if you're a non-resident company landlord'.

If the company has had tax deducted at source

If the company believes that tax has already been deducted at source under the Non-Resident Landlord scheme, please fill in and send us the enclosed certificate. Please give us the details of the letting agent or tenant who withheld the tax and paid it to us on the company's behalf. Please include any corresponding reference numbers.

What you may also need to consider

You'll also need to consider whether:

- the company owes any tax that may have been due in the past
- penalties – we have included factsheets to help you

If there are any UK-resident individuals who have any interest in the income or capital of the company, whether directly or indirectly, please ask them to make sure their tax affairs are up to date with the Transfer of Assets Abroad anti-avoidance legislation. For guidance, go to **GOV.UK** and search 'Income and benefits from transfers of assets abroad'.

This is a complex area of tax and we recommend getting professional tax advice.

If you do not give us the right information or we do not hear from you

We are giving you the opportunity to tell us about the company's tax position. If we later find that you have not told us everything, we'll view this very seriously.

If we do not hear from you within 40 days of the date of this letter, we may make an assessment of what we believe the company owes. If appropriate, we may open an investigation and consider charging penalties.

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Use this form to temporarily authorise us to deal with an agent about the disclosure, or a compliance check that we have made as a result of the disclosure only.

To get a copy of form COMP1A, go to **GOV.UK** and search for 'Comp1A' and click on 'Authorise HMRC to temporarily deal with your tax advisor'. Your agent can help you with completing the form. You will need to return this form to the address shown at the top of this letter. Please note that we will not be using the Digital Disclosure Service for this Disclosure.

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Nudge letters – the disclosure form



HM Revenue
& Customs

Casework ref: [Casework reference]

Complete this form, using capital letters where appropriate, to tell us about the disclosure you'll be making to HMRC. When you've completed the form, you can email it to us using the email address at the top of the letter. If you wish, you can post the form to us at ISBC, HM Revenue and Customs, BX9 1LE.

About the disclosure

What is the purpose of this disclosure?

Is this disclosure related to onshore or offshore liabilities?

Onshore ☐ Offshore ☐

Does this disclosure relate to any of the following? Put an 'X' in one box.

An individual ☐ A company ☐

A trust ☐ Another entity ☐

If you've chosen 'another entity', tell us which entity

About you

First name

Last name

Communication address

Postcode

Telephone number

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About you

Are you happy for HMRC to contact you by email?

No ☐ Yes ☐

If you've answered yes to the question above, tell us your email address

If you're happy for HMRC to contact you by email, you'll need to confirm in writing, by email or post, that:

- you understand and accept the risks of using email
- you are happy for us to send you financial information by email
- we can send you attachments

Are you representing an organisation?

No ☐ Yes ☐

If you've answered yes to the question above, tell us which organisation you're representing

Capacity in which you are completing this form for example, director, agent

If you're the authorised agent or representative, you'll need to confirm to us in writing that your client understands and accepts the risks of using email.

You must also send us signed authority that you can act on their behalf. You can do this by email or post.

Please read factsheet DSC1, 'Corresponding with HMRC by email' enclosed with this form for more information.

About the company

Company name

Registered address

Postcode

Company registration number

Telephone number

Email address

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Nudge letters – Certificate of tax position



HM Revenue
& Customs

Certificate of tax position - to be completed and returned to HMRC

Caseflow ref: [Caseflow reference]

The company's tax position

Choose which statement is accurate for the company's circumstances and tick the relevant box.

- 1 ☐ The company needs to bring its tax affairs up to date. The company will declare all its outstanding UK tax using the disclosure facility detailed in the letter. You must also tell us how the error happened and confirm that the error will not be repeated.

How did the error happen?

- 2 ☐ The company believes it has correctly declared all its income, gains, and liability to Annual Tax Enveloped Dwellings (ATED) on its tax return(s) as shown below:

Reference number(s)

--

Tax years(s)

--

For Non-Resident/ATED related Capital Gains Tax return(s), the date(s) of submission

--

- 3 ☐ The company has not declared income, gains and liability to ATED as they are not liable to UK tax for the following reasons.

Please be aware that we will use the information we have to check if the statement you have made is correct.
Please return your completed certificate by [date + 40 days].

7

Declaration

I can confirm that the information given on this form is correct and complete to the best of my knowledge and belief. I understand that dishonestly making a false statement to evade paying tax is a criminal offence and I may be subject to investigation and prosecution.

Name

--

Your role

--

Address

--

--

--

Postcode

--

Signature

--

Date

--	--	--	--	--	--

Checklist

- ☐ Email protocol read and authorisation included in response
- ☐ Agent authority form completed
- ☐ If making a disclosure, Notice of Intention completed
- ☐ Completed certificate
- ☐ If required, any supporting documents

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HMRC Statutory Powers



**Number of
taxes at stake**



**Range of
legislation
applying in
relation to
assessing time
limits and tax-
geared
penalties**



**HMRC will
consider
behaviour
leading to
submission of
an incorrect
return/failure to
file a return and
tax lost as a
result**



**Statutory
powers exist to
look back 20
years**



Penalties include:

- Late filing penalties
- Late payment penalties
- Inaccurate return penalties
- Failure to notify penalties



03

The rules

Hannah Keens

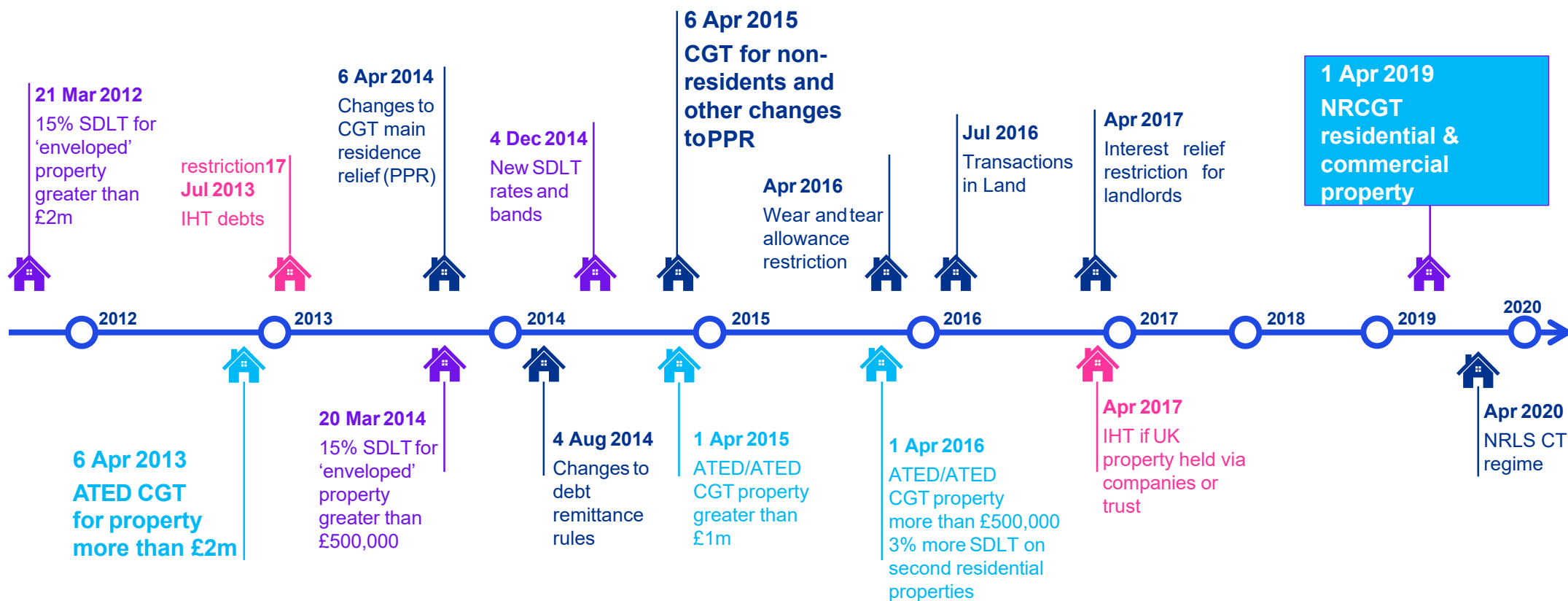
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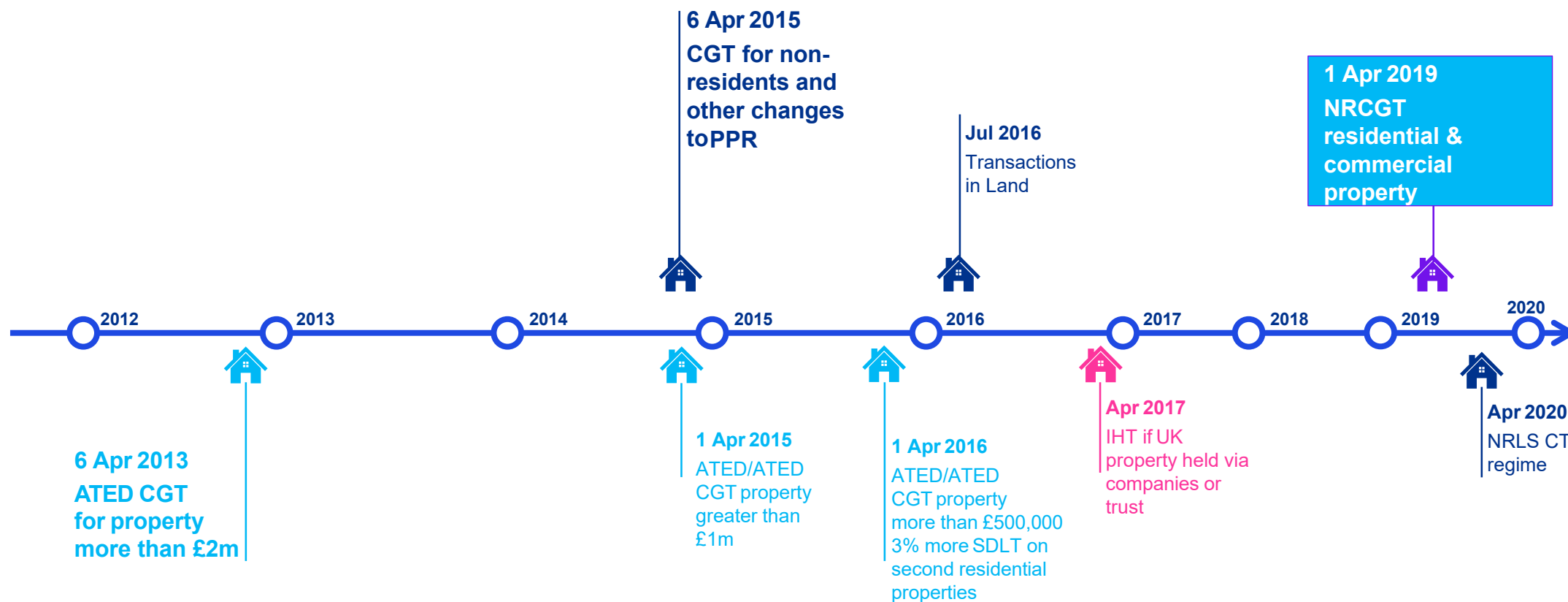
The on-going reform to UK property taxation

- Significant number of complex changes in the last ten years
- Many investors struggling to keep up



The on-going reform to UK property taxation

- Significant number of complex changes in the last ten years
- Many investors struggling to keep up



Annual Tax on Enveloped Dwellings

Payable annually by non-natural persons that own UK residential property valued at more than £500,000.

- Companies/Collective Investment Vehicles
- *Not trusts*

ATED related CGT

Reliefs

- Some properties will fall outside the scope
- Third Party Lets
- Employee accommodation
- Relief return

The 'Chargeable Period' and the Charge

- 1 April – 31 March
- Filing deadline 30 April following the 1st April.
- Charge is banded

Valuations

- Fixed valuation dates every 5 years
- Valuation requirements
- Pre-Return Banding check

Non resident capital gains tax



2015-2019

- Payable by all non residents (Individual/Trust/Co)
- Residential property only
- Ran concurrently to ATED CGT



April 2019

Scope extended in three ways:

1. ATED CGT abolished, replaced by NRCGT
2. Commerical property included
3. Sale of shares in a 'property rich' company included

Non resident capital gains tax



2015-2019

- Payable by all non residents (Individual/Trust/Co)
- Residential property only
- Ran concurrently to ATED CGT



April 2019

Scope extended in three ways:

1. ATED CGT abolished, replaced by NRCGT
2. Commerical property included
3. Sale of shares in a 'property rich' company included



Individuals and Trusts

- 20% commercial property
- 28% residential property

Companies

- Corporation Tax rates

Sale of Shares in residential company

- 20% rate (i.e. not the 28% rate)

Non resident capital gains tax

Rebasing Scenarios		
1	Shares in company	rebased to April 2019
2	Directly held commercial property	rebased to market value to April 2019
3	Directly held residential property	rebased to April 2015
4	Part residential and Part commercial property	Split rebasing according to resi/commercial split

- You must report and pay any Capital Gains Tax due on the sale of a UK property within;
30 days of selling it, if the completion date was between 6 April 2015 and 26 October 2021.
60 days of selling it, if the completion date was on or after 27 October 2021.

Non resident capital gains tax

Valuation issues



Other taxes mentioned

Historic anti avoidance provisions:

What you may also need to consider

You'll also need to consider whether:

- the company owes any tax that may have been due in the past
- penalties – we have included factsheets to help you

If there are any UK-resident individuals who have any interest in the income or capital of the company, whether directly or indirectly, please ask them to make sure their tax affairs are up to date with the Transfer of Assets Abroad anti-avoidance legislation. For guidance, go to **GOV.UK** and search 'Income and benefits from transfers of assets abroad'.

This is a complex area of tax and we recommend getting professional tax advice.

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For guidance, go to **GOV.UK** and search for 'NRCGT attribution of gains'.

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S13 – the new S3 tail continues



S720 income look through provisions highlighted



Transactions in land; property trading, property development and/or acquisition of property with the aim of realisation of a gain on disposal, subject to income tax instead.



Rental income reporting (NRL)



04

How can we help

Paul Beale

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How can we help?



Training



Checklists



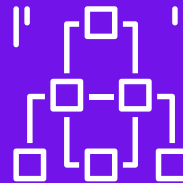
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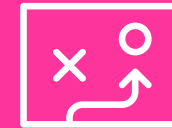
Disclosures



Compliance

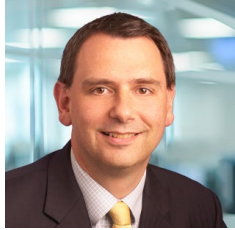


Tax Risk Framework



Proactive or Reactive

Get in touch



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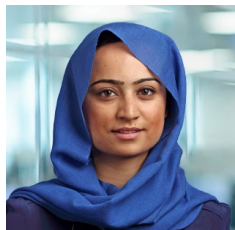
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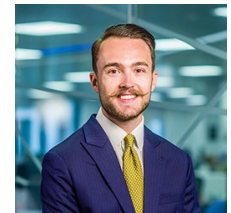
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05

Questions?

Thank You



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