FURTHER TAX CHANGES FOR NON-RESIDENTS HOLDING UK PROPERTY

6 September 2019

In recent years the UK Government has introduced many new rules targeting UK property held by non-residents (both corporate structures and individuals). While many wide-ranging changes have already been implemented, further changes take effect from April 2020.

Residential property disposals by non-resident companies

Since April 2019, all residential property gains realised by non-resident companies have been brought into the corporation tax regime.

Post-2015 property gains are now subject to corporation tax at 19%, but the rate is expected to fall to 17% from April 2020 onwards. This includes residential property disposals by diversely held non-resident companies. Prior to 2019, only disposals by "closely held" companies (i.e. those controlled by five or fewer participators, or any number of directors) were chargeable.

Residential property disposals by non-resident individuals

Non-resident individuals disposing of UK residential property are still subject to NRCGT at the higher rates applicable to residential property gains (18%/28%).

All commercial property disposals by non-residents are now taxable

Since April 2019, gains on the disposal of any UK commercial property held by a non-resident "person" are taxable. The property is rebased to its market value on 5 April 2019 when calculating the gain. An election can be made to use the total gain (or loss) since acquisition.

Gains of non-resident individuals and certain trustees are subject to CGT at the normal rates (10%/20%), whereas gains made by non-resident companies are subject to corporation tax.

Disposals of interests in "property rich companies" are now taxable

From April 2019, a disposal by a non-resident of an interest in an entity, such as a company or certain trusts that are "property rich", is now within the scope of either CGT or corporation tax (for companies) if the non-resident holds an interest of 25% or more in the entity, or has done so at some point in the two years ending with the date of the disposal (including the period before April 2019). Interests held by certain related parties are taken into account in determining whether the 25% test is met.

An entity is "property rich" if, at the time of the disposal, 75% or more of the value of the asset disposed of derives directly or indirectly from UK land (whether commercial or residential). This test is based on the gross asset value of the entity, looking at the market value of its assets at the time of the disposal without any deduction for liabilities such as loan finance.

The disposal might be directly of the interest in the property rich entity, or it might be a disposal of a holding company or an entity with a structure of companies or trusts beneath it that, taken together, meet the property richness test.

There are specific exemptions for gains arising on the disposal of interests in companies that are trading companies both before and after the disposal. These are intended to help ensure that investors in property rich trading vehicles such as hotels, care homes and retailers are not disadvantaged by the new rules.

Double taxation agreements with certain jurisdictions, such as Luxembourg, may also over-ride the tax charge on sales of shares in land rich entities. Some investment funds may, alternatively, qualify for the valuable Substantial Shareholdings Exemption that applies to structures meeting qualifying institutional investor requirements.

Investors in property funds that are collective investment vehicles

A separate regime operates for UK property rich collective investment vehicles, which includes certain types of property trusts, UK REITs and offshore companies similar to REITs and offshore companies similar to REITs. The default position is that all disposals by non-residents of investments in such vehicles are taxable, even if the investment in the vehicle is below an interest of 25%.

Various elections might, however, be possible at the fund level. Vehicles, such as property unit trusts, may elect to be treated as fully transparent, in which case the investors are deemed to have realised the gain. Certain widely held, or institutionally held, offshore companies and collective investment vehicles may be able to benefit from an "exemption election". This removes tax from within the structure and charges gains at the level of the investors.

The purpose of these elections is to help ensure that exempt bodies, such as pension funds or sovereign wealth funds, that hold investments through overseas vehicles, are not unduly disadvantaged by the non-resident gains rules. Many offshore property funds can, therefore, now benefit from a similar tax exemption regime for capital gains as UK REITs.

These rules are complex, however, and subject to numerous conditions. Where eligible, the choice of elections will depend on a number of factors including the tax profile of the investors (all of the investors in the fund, including UK individuals and companies, may be affected so specialist advice from BDO should be sought).

Corporation tax on rental profits from 6 April 2020

From 6 April 2020, non-UK resident companies that carry on a UK property rental business or have other UK property income will be liable to corporation tax (at 17% from April 2020), rather than income tax (at the basic rate of 20%).

Unused income tax losses will be carried forward into the new corporation tax regime. Larger companies, however, may be affected by rules that restrict the use of brought forward losses and put a cap on the deduction of interest expense. Non resident companies that are part of a group may be able to benefit from group relief from 6 April 2020.

For those companies affected, the change will take place at the end of the 2019/20 tax year, with their income tax property business deemed to cease on 5 April 2020, and a new corporation tax business and tax period beginning on 6 April 2020.

For companies that do not prepare accounts in line with the tax year, a time apportionment of income and expenses will be needed for accounting periods that straddle the commencement date. Profits or losses arising in the period to 5 April 2020 will be subject to income tax, with any income arising from 6 April 2020 being subject to corporation tax.

Companies affected by the change will need to register for corporation tax with HM Revenue & Customs (HMRC). This will apply even where companies are already registered with HMRC under the Non-Resident Landlord Scheme.

Taxpayers will need to complete a final self-assessment return in the normal way to report the proportion of income arising up to 5 April 2020. A corporation tax return will need to be filed for the period commencing 6 April 2020 and for subsequent accounting periods.

Corporation tax returns and computations will need to be filed online using the Inline eXtensible Business Reporting Language (known as iXBRL), together with accounts. Depending on the affected company's circumstances, it may be necessary (and in some cases desirable) for the accounts to be filed in iXBRL format.

Reporting and payment obligations

Property disposals by non-resident individuals and trustees from 6 April 2019 must be reported and tax paid on account within 30 days of completion. There are limited exceptions, for example "no gain/no loss" transfers between spouses. It is still possible to delay paying CGT until filing a self-assessment return for 2019/20 only.

Non-resident companies and other vehicles will have to register with HMRC within 90 days of making their first disposal. Payment of tax is usually due nine months and one day after the end of the accounting period. Very profitable companies pay tax sooner under the quarterly instalment payment (QIP) regime. If a company disposes of its only property this could result in a 1-day accounting period, which would also accelerate the payment date.

Stamp Duty Land Tax changes

The deadline for filing an SDLT return in England and Northern Ireland was shortened from 30 days to 14 days for transactions on or after 1 March 2019. The Government is also consulting on proposals to introduce a 1% SDLT surcharge for purchases of UK residential property by non-resident individuals and non-natural persons. No commencement date has yet been announced.

How can BDO help?

UK property held by non-residents has been a particular target of tax changes in recent years. The new rules introduced by the Government are very complex and wide ranging. BDO can provide you with specialist advice on how to comply with these new requirements and taxes, and take advantage of any reliefs or exemptions available to manage your tax exposure.

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