

Important changes affecting non-residents disposing of interests in UK property

New rules take effect from 6 April 2019 extending the scope of UK tax on gains.

These changes also give rise to new notification/filing obligations.

Basic rules

From 6 April 2019 non-UK residents are subject to UK tax on gains on direct and certain indirect disposals of interests in UK immovable property.

Broadly, the indirect disposal rules will apply where a person makes a disposal of an entity in which it has at least a 25% interest (or any interest in certain collective investment vehicles ("CIVs")), where that entity derives 75% or more of its gross asset value from UK land. Disposals of interests in entities where the property is used in a trade are excluded from the charge, subject to certain conditions being satisfied.

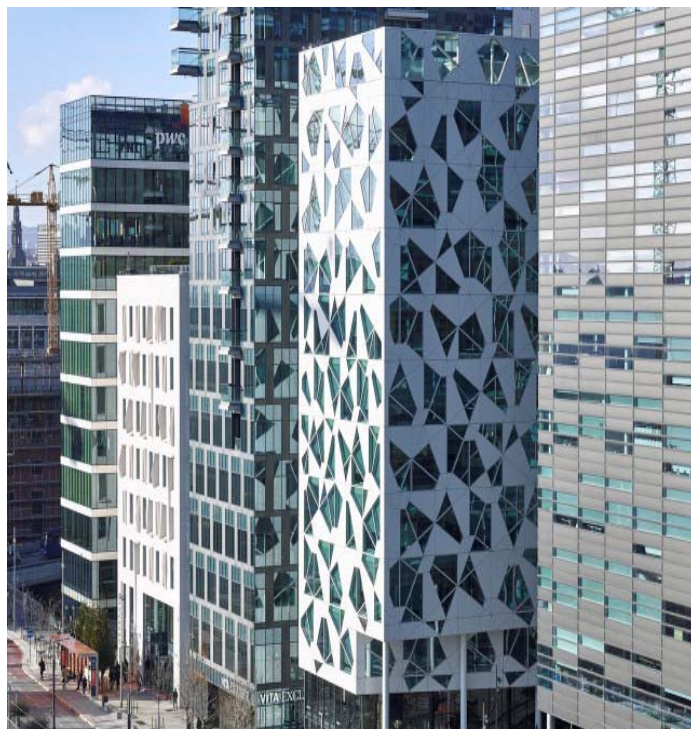
The gain or loss is calculated by reference to the market value (of the asset being disposed of) on 5 April 2019, with the option to use the original acquisition cost. However, where the original acquisition cost is used in the case of an indirect disposal, and this results in a loss, this will not be an allowable loss. There are also transitional rules that apply in the case of direct disposals of UK residential property that would previously have been within the charge to UK tax prior to 6 April 2019.

Existing reliefs and exemptions available for capital gains (e.g. the substantial shareholding exemption) will be available to non-UK residents, with modifications where necessary. Those who are already exempt from capital gains for reasons other than being non-UK resident will continue to be exempt (for example, "overseas pension schemes" and certain charities). The provisions of any relevant double tax treaty would also need to be considered.

Disposal events

In addition to a sale, gift or transfer, a disposal may also be triggered in a number of other ways, e.g. on the grant of a lease or the receipt of capital sum (e.g. compensation for "rights of light" and payments made on the early surrender of leases), or on receipt of a capital distribution from a company (or a CIV which is treated as a company).

Where an asset is disposed of under a contract the disposal occurs at the time when the contract is made, or if the contract is conditional, at the time condition is satisfied.



Tax rates

All non-UK resident companies (including certain CIVs, which are treated as companies) will be charged to corporation tax on gains (at a rate of 19% for disposals prior to 1 April 2020).

Non-resident individuals and trusts (unless treated as companies) will be subject to capital gains tax. There are different rates of tax, e.g. depending on whether there is a direct disposal of residential property, and whether there is other taxable UK income.

Key dates

Individuals and trusts

- Notification is required within 30 days of completion of the disposal.
- Capital gains tax is payable 30 days from the completion of the disposal (subject to transitional provisions).

Companies (including deemed companies)

- Registration is required within 3 months of the date of the disposal.
- Corporation tax is payable 3 months and 14 days from the date of the disposal.

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Filing and payment dates

Individuals and Trusts

Individuals and trusts (other than those trusts which are treated as companies) will need to notify HMRC, and pay any tax due, within 30 days of the completion of a disposal (subject to transitional provisions where there is an existing requirement to file a tax return).

Broadly, for this purpose, completion occurs at the time of disposal unless the disposal is completed at a later date by a conveyance, transfer or other instrument, in which case completion occurs when that instrument takes effect.

Disposals will not need to be reported where the disposal is treated as being on a no gain/no loss basis, is the grant of lease for no premium to third party on an arm's-length basis, is made by a charity, or is of any pension scheme investments.

The disposal should be notified by filing an online return (together with a computation of the gain/loss):

(https://www.tax.service.gov.uk/shortforms/form/NRCGT_Return)

Payment reference and details on how to pay will then be sent.

If there is already have an existing relationship with HMRC - for example, through filing a non-resident landlord return in respect of UK property income - there are transitional provisions which mean that payment of tax and submission of the computation in respect of disposals prior to 6 April 2020 may be deferred until 31 January 2021. However in such cases it is still necessary to file the notification of the disposal within 30 days of the completion of the disposal.

If you do not notify on or before the deadline there is a late filing penalty, and interest may be charged on tax not paid by the due date.

Further details can be found here:

(<https://www.gov.uk/guidance/capital-gains-tax-for-non-residents-uk-residential-property>)

Companies (including deemed companies)

Where a non-UK resident company which is not already within the charge to corporation tax (e.g. by trading through a permanent establishment in the UK) becomes chargeable as a result of a disposal on or after 6 April 2019, it must register within 3 months of the date of that disposal.

Details of how to register with HMRC can be found here:

<https://www.tax.service.gov.uk/submissions/new-form/register-non-resident-company-for-corporation-tax-unauthenticated/nonagent>

Following registration a Unique Tax Reference ("UTR") will be sent, which is used to register for HMRC online services. Once registered for online tax services an online corporation tax return in respect of the disposal can be filed.

The date corporation tax becomes due and payable depends on the amount of the company's taxable profits and the length of the company's accounting period.

In practice it is likely that this means tax will be due on the date of the disposal, but HMRC will apply concessionary treatment in these cases and any payment of corporation tax will be due and payable 3 months and 14 days after the disposal date.

If you do not notify on or before the deadline a penalty may arise, and interest and penalties may also be charged on tax which is not paid by the due date.

Further details can be found here:

<https://www.gov.uk/guidance/register-a-non-resident-company-for-corporation-tax>

How can PwC help?

If you would like to discuss the proposals further, please get in touch with your usual PwC tax contact