

UK real estate investments – non-resident companies must register with HMRC for Corporation Tax under new regime applying from April 2019

From 6 April 2019, capital gains made by non-resident companies from disposals of all UK real estate (both residential and non-residential) are within the charge to UK Corporation Tax (“CT”). The same applies for certain “indirect” disposals of UK real estate, i.e. where a non-resident company disposes of an interest in another company that is UK “property rich.”

From 6 April 2020, all income (e.g. rents) of non-resident companies from UK real estate investments will also be within the charge to CT.

As a result of these changes, non-resident companies will need to register with HMRC for CT within 3 months of the date of either of the above CT charges applying to them.

Moreover, from 6 April 2019, capital gains from the following have become taxable for all non-residents (i.e. both companies and natural persons) for the first time:

- i. Non-residential (i.e. commercial) UK property interests; and
- ii. Shares of companies that are UK “property rich” (i.e. those that derive at least 75% of their value from UK real estate of any type) where the seller held at least 25% of the shares.

The remainder of this briefing gives further detail on compliance obligations for CT, the tax implications of the new charge to CT and how Verfides can help.

Registration, tax returns and payment of tax

The deadline to register with HMRC for CT is always 3 months from coming within the scope of charge.

All UK real estate sales (i.e. both non-residential/commercial and residential) are within the scope of charge to CT for non-resident companies from 6 April 2019. But rental income will only come within scope of the charge to CT for non-resident companies from 6 April 2020.

Therefore, a non-resident company not already registered for CT will now need to register within 3 months of the sale of any UK land or property. If the real estate in question had previously been rented out to a tenant then, for the 2019-20 tax year only, the non-resident company will be within a dual regime requiring it to file a CT return in respect of the sale (whether it results in a gain or loss) and a hardcopy income tax return to report the rental income up to the point of sale. In these cases, the CT return will cover an accounting period of one day only, i.e. the date of sale.

The normal CT filing and payment deadlines will generally apply, such that payment is generally due 9 months and 1 day following the end of the accounting period; with the CT return filing (counterintuitively) having a later deadline of 12 months following the end of the accounting period.

However, CT is required to be paid by instalments where profits exceed £1.5m. Non-resident companies generating a gain at this level will then have 3 months and 14 days to pay the total CT liability.

Non-resident companies already receiving UK rental income will have 3 months from 6 April 2020 to register for CT. Unless they later become dormant for CT purposes, they will then already be registered to report any sales occurring from this date. For payment of CT in this scenario the same principles as outlined above will apply.

Tax implications of the new CT regime

The tax implications resulting from the move to CT for non-resident companies include the following.

Lower rates of tax

CT is currently charged at 19% on both gains and income, but the rate is set to reduce to 17% from April 2020 (when rental profits will come into charge).

This compares very favourably with the 28% rate of ATED-CGT which applied to gains on residential property within the ATED regime. ATED-CGT is abolished with effect from 6 April 2019.

The 19% (or 17%) rate of CT also compares favourably with the 20% rate of NRCGT which previously applied to residential property investments not within ATED (i.e. by virtue of use in a property business).

Rebasing dates

For the purposes of computing gains on sale under CT, investments in commercial property and shares of property rich companies will be rebased to their market value at April 2019 (or the date of acquisition, if later). This is in order that tax is not charged on gains that accrued before the new regime began to apply.

Residential property investments will be rebased to market value at April 2015 (or the date of acquisition, if later), as was the case under the NRCGT regime previously applying.

Residential properties that were previously within ATED were rebased to market value at April 2017 for

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ATED-CGT, so the new rebasing under CT to market value at April 2015 could imply either a tax benefit or cost depending on value fluctuations between these dates (with any cost mitigated by the lower tax rate).

Indexation allowance

Gains charged to CT benefit from the indexation allowance, which provides a measure of relief in line with inflation. However, the allowance has been frozen from 31 December 2017, meaning the indexation allowance will only give relief for residential property gains during periods of ownership in the 21 months from April 2015.

Extended filing and payment deadlines

Whereas gains charged to NRCGT or ATED-CGT were required to be reported on a tax return within 28 days of sale (with the tax also to be paid in this timeframe in many cases), non-resident companies will now have the extended deadlines as outlined above.

How Verfides can help

We specialize in advising non-residents on UK taxation, including tax planning and mitigation opportunities, and UK real estate is naturally a key area of focus.

Overview commentary is included in this briefing, but we would encourage readers to get in touch with us for further advice tailored to their specific circumstances.

We can also handle all UK tax compliance obligations on your behalf, including registration for CT and preparation and filing of returns.

If Verfides already serves as tax agent of a non-resident company for income tax purposes then we will be able to arrange its registration for CT without the need for separate CT authorisation vis-à-vis HMRC.

This document has been prepared as a general guide on 15 April 2019 and it is based on the latest legislation and published information available at that time. Whilst every care has been taken in its preparation, Verfides cannot accept any responsibility for any person relying on this publication. Professional advice should be obtained before undertaking transactions and Verfides will be pleased to provide such advice where appropriate.