

Taxing Times for Commercial Property

Disposal of UK commercial property by non-resident investors will no longer be exempt from capital gains tax. Following an overhaul of how such investors are taxed on UK residential property, similar measures for commercial property will be introduced next year. Although the Government consulted on these changes, this will be unwelcome news for many investors. Overall, however, investing in commercial property will still offer more beneficial tax treatment than investing in residential property.

The new rules are complex, and those affected should obtain professional advice. As an overview, we have set out a high level summary below:

- **Non-resident companies**

- From 1 April 2019, foreign companies will be subject to UK corporation tax (currently 19% and reducing to 17% by 2020) on the disposal of UK commercial property. The tax will be applicable to any **post-April 2019** gain only (although it will be possible to use the pre-April 2019 acquisition cost of the property, if preferred). A valuation as of 1 April 2019 will be required to accurately calculate the tax due.
- From April 2020, UK rental income received by foreign companies will also be subject to UK corporation tax (as opposed to UK income tax)
- The UK corporation tax rate is currently very competitive, for example compared to 21% in the USA and 30% (effectively) in Germany.

- **Non-resident individuals**

- From 6 April 2019, non-resident individuals will be subject to capital gains tax at 28% on any post-April 2019 gain on the disposal of UK commercial property only (although it will be possible to use the pre-April 2019 acquisition cost of the property, if preferred). A valuation as of 1 April 2019 will be required to accurately calculate the tax due.

- **Indirect disposals of commercial property**

- Non-residents who have invested in UK commercial property indirectly (e.g. through a company or trust) may also be caught by the new rules. Capital gains tax will apply to disposals where:
 - a company, partnership or trust derives 75% or more of its value from UK property; and
 - a person holds (or held in the 5 years before the disposal) at least a 25% interest in that entity.
- Only the post-April 2019 gain will be taxable, with no option to use the pre-April 2019 acquisition cost. Again, a valuation as of 1 April 2019 should be obtained in order that the tax on a future disposal may be calculated accurately.
- Unlike the recent changes introduced for residential property, these changes will affect both closely held companies (in

broad terms companies controlled by 5 or fewer persons) and widely held companies. This means small personal and family companies will be affected in the same way as larger commercial investment companies.

- **No Annual Tax on Enveloped Dwellings (ATED)**

- There will be no equivalent to the ATED applicable to commercial property held through companies, and therefore no equivalent to the complex ATED related capital gains tax charge on a disposal of commercial property by a company.

- **Inheritance tax**

- A non-UK domiciled (and non-UK deemed domiciled) individual can protect the value of the commercial property from inheritance tax by owning the property through a non-UK resident company and trust structure.
- This protection was removed for UK residential property interests from 6 April 2017.

Whilst there has been no change announced in respect of commercial property, there is a risk of the Government introducing this change in the future.

- **Is my commercial property holding structure still fit for purpose?**

- In some cases, migration of non-UK structures to the UK may result in more efficiency.
- Rollover relief may be available to defer capital gains tax on certain assets, if they are replaced with new business assets.

Non-resident individuals and businesses with UK commercial property structures should be considering how to manage the impact of these radical new rules.

Please contact our Private Client and Tax teams for further information and assistance.

For further information, please contact:



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