CHILD & CHILD

New CT regime from 6 April 2019

NEW CT REGIME FROM 6 APRIL 2019 INFOSHEET

NRCGT and ATED-related CGT no longer apply to transfers by non-UK companies of interests in UK land after 5 April 2019. Instead, UK Corporation Tax (CT) applies instead to any gains realised by companies in relation to disposals of both directly held interests in UK land as well as of shareholdings in "property-rich" companies.

A "property rich company" is, broadly one of which 75% or more of its value derives from UK real estate interests. There is also a 25% or more holding test, which must have been met at the date of disposal or any time within the preceding two years. Both the 75% and 25% test have detailed rules.

Substantial Shareholding Exemption (SSE) can apply if the conditions for this are met. There are also exemptions for UK land used in a "qualifying trade" including non-trading land worth no more than 10% of the value of the UK land used for the purposes of a qualifying trade.

There is also a new regime for UK property gains realised by overseas collective investment vehicles (CIVs) such as unit trusts, partnerships and offshore transparent funds. Broadly-speaking:

- Partnerships will remain tax-transparent.
- Non-partnerships but transparent (such as unit trusts) will be regarded as companies for this purpose but can make an irrevocable election to be transparent.
- Companies can elect to be transparent if certain conditions are met.
- Real Estate Investment Trusts (REITs) will not be subject to CT on disposals of interests in property-rich entities or in an overseas CIV which has not made a transparency election.

Overseas investors in overseas CIVs, Property Authorised Investment Funds (PAIFs) and REITs may also be subject to UK tax on disposals of their holdings in these entities exceeding the 25% threshold.

From 6 April 2020, non-UK companies will also cease to pay income tax on their UK property income.

"Anti-forestalling" provisions have applied since 22 November 2017 (overriding double taxation treaty exemptions) and 6 July 2018 (arrangements intended to avoid the new CGT rules).

CT on both gains and income will be computed on CT principles, including indexation allowance until December 2017 on land held for investment rather than trading purposes and different rules on deductibility of interest in respect of rental income. Offsetting of losses on disposals of UK land interests remains restricted to gains realised on disposals of these.

For residential land held at both 6 April 2015 and at 6 April 2019, the default base cost on a disposal on/after 6 April 2019 will be the 5 April 2015 market value. There remain two alternative elective ways of computing any gain from the actual pre-6 April 2015 acquisition cost,

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one of which apportions gains before and after 5 April 2015 with only gains afterwards being taxable. These methods can give a better result than the default option, but computations are needed to confirm this.

For assets first coming into charge from 6 April 2019, the default CT base cost is the market value as at 5 April 2019. It is possible to elect to use an actual earlier acquisition cost, as the CT base cost instead, but unlike assets within the charge to tax before that date, time-apportionment is not available.

Non-UK companies which become UK-tax resident (i.e. “onshore”) can retain 5 April 2019 re-basing.

There are also special rules where UK land has both residential and non-residential elements.

HMRC issued guidance on the filings for non-UK companies subject to the new CT charges on 8 April 2019. In a nutshell:

- The company must register online for CT within 3 months of the disposal if not already registered for UK CT purposes.
- If the company already has a Government Gateway user ID and password, it should now be able to register for CT online.
- Otherwise, the company will need to register online to get this ID and password.
- HMRC will then set-up a CT record for the company and send a CT unique taxpayer reference (UTR) number. This should be done within 15 working days.
- The CT return should then be able to be completed and filed online.
- Any CT may be due as soon as the date of disposal (i.e. gains over £1.5 million).
- By concession the time to pay CT is 3 months and 14 days after the date of the disposal.

A non-UK company will cease to be subject to UK corporation tax if it has sold its only asset of UK real estate. If so, it will only have a one-day accounting period corresponding to date of disposal.

The UK tax authorities have stated that they will be contacting such companies in the summer of 2019 with further detail (we assume including detail on how to register).

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