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Briefing document

UK land: Disposals by non-UK residents

Introduction
Non-UK residents are chargeable in almost all cases when they realise a gain on disposal of UK land, whether the land is residential or non-residential land, such as commercial land and farmland. The rules have changed significantly over recent years and the tax position on disposal can vary depending on the type of land and the specific circumstances of the owner.

In addition, non-UK residents may also be chargeable if they dispose of certain 'indirect' interests of UK land, such as shares in companies that own UK land.

We have assumed in this note that the person making the disposal has been non-UK resident throughout the time they have owned their property interest, and will remain so until disposal.

This note sets out a high-level overview of the tax position of non-UK resident individuals, trustees and companies on disposal of UK land. Other matters should also be considered, such as non-tax considerations and the tax position in the jurisdiction of residence. Advice should be taken on your specific circumstances, as appropriate. This note only comments on UK taxation.

Chargeable gains
This note assumes that any gains realised will be taxable as chargeable gains. Gains may be taxable as income if the property is used as part of a property development business. Advice should be sought where this relevant.

This note principally comments on the tax position of gains but, broadly, if a gain would be chargeable relief for losses can be claimed (subject to an exception for indirect disposals set out in the rebasing section below).

Direct and indirect disposals

Direct disposals
Direct disposals are, as the name implies, a disposal by the person who owns the property. For example, if a company owns a property and sells the property itself, as opposed to the company's shareholders selling their shares in the company.

Indirect disposals
- Gains on certain 'indirect' disposals of UK land are within the scope of UK taxation.
- This would encompass, for example, shareholders in a company that owns UK land selling their shares, as opposed to the company selling the property.
- Indirect disposals of UK land are only within the scope of UK taxation where the disposal is of a 'UK property-rich' entity, usually a company. A company, is UK property-rich if at least 75% of its gross asset value derives from UK land. Debts are ignored when determining the proportionate value of assets held.
- To be within the scope of these rules, the vendor must have had at least a 25% interest in the company at some point in the two years preceding disposal. Broadly, this test is satisfied if the person has at least a 25% economic interest and/or at least 25% of voting rights. Interests of 'connected persons', such as certain family members, are taken into account when determining the vendor's percentage interest in the entity.
- An exemption is available where all UK land, except that of low value (as defined), has been used in or for a commercial trade carried on on a commercial basis for at least 12 months before disposal, and it is reasonable to conclude that this use will continue for more than an insignificant period following disposal.

- In certain circumstances, an exemption from corporation tax (the 'substantial shareholdings exemption') may be available if a company sells shares in a trading company.

Rates of taxation

The rates of tax payable by non-UK residents mirror those payable by UK residents. The rates vary depending on the nature of the person who owns the property and the type of land, as set out below.

Tax/Type of land	Individual	Trustees directly	Company
UK residential property	• Capital Gains Tax (CGT) applies to the extent UK residential property gains exceed the annual exemption (£12,300 in 2020/21). • 18% CGT applies to chargeable gains within the basic rate band and 28% CGT applies to the extent chargeable gains exceed the basic rate band. • The gain may be reduced by Private Residence Relief (PRR) if the property is used as the only or main residence of the individual who owns the property (see below).	• 28% CGT applies to residential property gains that exceed the trustees' annual exemption (£6,150 in 2020/21). • PRR may be available if a property is a trust beneficiary's only or main residence, subject to conditions (see below).	• 19% corporation tax applies to UK residential property gains. • Companies are not eligible for an annual exemption.
Non-residential UK land and indirect disposals.	• CGT applies to the extent the taxable gain exceeds the annual exemption, as above. • The CGT rate is 10% for gains within the basic rate band and 20% to extent gains exceed the basic rate band.	• 20% CGT applies to the extent gains exceed the trustees' annual exemption.	• As above, companies pay 19% corporation tax on gains and are not eligible for an annual exemption.

Rebasing

Non-UK residents may be eligible for rebasing on disposal of UK land, such that tax should only apply from the date the owner of the land first came within the scope of UK taxation on the gain realised on disposal.

If any gain realised on disposal is not otherwise taxed (e.g. the gain attributable to the period before the rebasing date), UK resident company shareholders or trust beneficiaries (as appropriate), may be taxable on the otherwise untaxed gain, depending on how the property is held. This is a complicated area and suitable advice should be taken where this point is or may be relevant.

Automatic rebasing position

Tax/Type of land	Individual	Trustees directly	Company
UK residential property	• Individuals are automatically eligible for rebasing to 5 April 2015 value of the property, such that only the uplift in value from this date is taxable. • In certain cases if an individual who was previously UK resident resumes UK residence within five years of departure, the pre-5 April 2015 gain will be taxable on resumption of UK residence.	• Trustees are eligible for rebasing to the 5 April 2015 value of the property.	• Non-UK resident companies are generally eligible for automatic rebasing to 5 April 2015 value. • In some cases rebasing to 5 April 2019 value may apply instead. This is relevant to 'diversely-held' companies that were previously eligible for an exemption from taxation.
Non-residential UK land and property and indirect disposals.	• Rebasing applies to 5 April 2019 value.	• Rebasing to 5 April 2019 value applies.	• Rebasing to 5 April 2019 applies.

Other methods of rebasing

Original cost election

- In all cases it is possible for the vendor to make a disposal to calculate the gain or loss realised on disposal using the original cost of the property (or indirect interest, in the case of an indirect disposal). This is most likely to be relevant where the property is standing at a loss or where it would be uneconomical to value the property on the rebasing date.

- Relief can be claimed where a loss arises on a direct disposal if an original cost election is made.
- Loss relief **cannot** be claimed if an original cost election is made in respect of an indirect disposal.

Straight-line apportionment

- Vendors who are chargeable on direct disposals of UK residential property where a rebasing date of 5 April 2015 applies have an additional computational option, in that the gain or loss can be time-apportioned into chargeable and non-chargeable periods, and tax paid on the gain attributable to the former.
- Straight-line apportionment is unavailable on indirect disposals and disposals with a 5 April 2019 rebasing date.

Use of a UK residential property as a home

Availability of Private Residence Relief (PRR)

- **Direct ownership by individuals:** If a UK residential property is used as the only or main residence by an individual who owns the property directly the chargeable gain may be reduced, potentially to nil, by PRR. PRR applies on a pro-rata basis if the property has only been used as the PRR for part of the ownership period.

  PRR may be restricted (i.e. unavailable) if the individual who owns the property and their spouse or civil partner is non-UK resident in the tax year, depending on how often the property is occupied. Where PRR is only available for part of the ownership period, the gain is time apportioned between periods when PRR is available and periods when it is not, and CGT applied to the gain attributable to the latter period.
- **Direct ownership by trustees:** Trustees who own a UK residential property directly may be eligible for PRR if a trust beneficiary occupies the property as their only or main residence. PRR may be reduced in some circumstances, as set out for individuals above.
- **Companies and indirect disposals:** PRR is unavailable to companies and on indirect disposals.

Multiple residences

- Broadly, PRR is only available on one residence at a time (subject to an exception for the final nine months of ownership). Where more than one residence is available an election can be made for a given residence to be the PRR for tax purposes. Residence is broadly defined and is in essence using a property as a home and can include properties that the individual rents for their own use, even though a gain is unlikely to arise.
- Non-UK residents can decide which of their available residences should be the PRR for tax purposes on disposal. UK residents can only decide which of their available residences is their PRR for tax purposes by making an election within two years of a change of available residences. It may be advisable for non-UK residents to make a PRR election within the same time frame, in case they commence UK residence by the date of disposal and find they are unable to decide which of their available residences is their main residence for tax purposes. If no election is made, which property is the PRR will be determined based on the available facts that indicate which property is used as the main residence, which may not give the preferred outcome.

Reporting and tax payment deadlines

- Non-UK resident individuals and trustees must usually report UK property disposals, whether direct or indirect, within 30 days of completion. Extremely limited exemptions from these requirements apply, including for example nil gain/nil loss disposals, such as transfers between spouses/civil partners.
- Different filing and tax payment deadlines apply to companies. Broadly, the shortest deadline that would apply to companies is to notify HMRC if the company has come within the scope of corporation tax within three months of doing so. Tax filing and payment deadlines vary depending on the size of the company.

Find out more…

This note reflects the law in force as at 30 April 2020 and draft legislation in the Finance Bill 2019-21 which may change before enactment. Please be aware that this note does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk). For further information visit our website at www.deloitte.co.uk.