July 2021

# The Property Round

## In This Issue

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GERALD EDELMAN

# EDITORIAL

## They say that as one door closes, another one opens.

And while the 21st June "Freedom Day" was no longer the final stage of England's re-opening, it does mark the official beginning of summer in the UK – with so many summer days (well we hope!) and unmissable moments just around the corner.

How is the year 2021 turning out so far for the property market in England? I believe it is influenced in three parts dictated by the stamp duty holiday, the effect of the current restrictions on people's desire to move on one hand and their household finances on the other end, and, thirdly, the rollout of the vaccination programme. I have spoken to many solicitors over the past few weeks and they all say they have been inundated with the pressures to complete due to the desire to beat the stamp duty holiday deadline which has helped sustain activity in the first quarter of 2021 to extend into the second quarter too.

It is also fair to say the capital is spreading out – the once golden postcodes of Mayfair, Belgravia and Kensington have experienced fall in prices but in other areas, just beyond the centre, it was a different story. The highest annual increase in sales was for properties on the fringes of prime central London, according to LondonRes, a property analysis firm. This is illustrative of the deep fragmentation of the market due to the pandemic. The end of the stamp duty holiday may coincide with rising unemployment which may slow activity and potentially lead to price volatility. Whilst the experience of the latest lockdown will continue to increase people's desire to move, the economic impact may restrict their ability in the second half of 2021.

Thereafter, the economy is expected to begin to recover especially as the vaccine rollout gains traction and people begin to return to a more normal live-work pattern which is likely to cause the housing market to pick up again. On the live-work front, is repurposing commercial spaces, retail spaces and all such like buildings where so many of us used to spend so much of our waking hours, the way forward? I would love to hear your thoughts.

Enjoy our summer edition of The Property Round!

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XLNC FOUNDING MEMBER

# PROPERTY SECTOR UPDATE

## The last six months have been eventful to say the least.

What started off as an anxious time with tax relief deadlines looming as people and businesses rushed to close transactions before 31 March, ended with a more relaxed period as early signs indicated a successful vaccine rollout alongside extensions to tax relief deadlines to 31 July.

At the beginning of 2021 growth in the property market picked up, driven by the easing of lockdown restrictions allowing buyers to visit properties. The small dip seen in residential sales at the end of Q1 was proved to be temporary with property prices at all-time highs. For all property sections the outlook is mixed, with Zoopla recently revealing the average days for residential sales completion increased from 90 to 115. Businesses are still uncertain as to how many staff will return to the office and over what period this will take place, which only fuels the challenge of forecasting.

### HOUSE PRICES

House prices in the UK continue to rise as they have been since the economic crash in the late 2000's. Despite the coronavirus pandemic ("pandemic") and Brexit causing minor shake ups, government interventions continue to bolster the homebuyer market. In the year to April 2021, the average house price increased significantly by 8.9%, however it has fallen slightly from the highs in February 2021.

**AVERAGE HOUSE PRICE, UK, JANUARY 2005 TO APRIL 2021**


Source: HM Land Registry – UK House Price Index

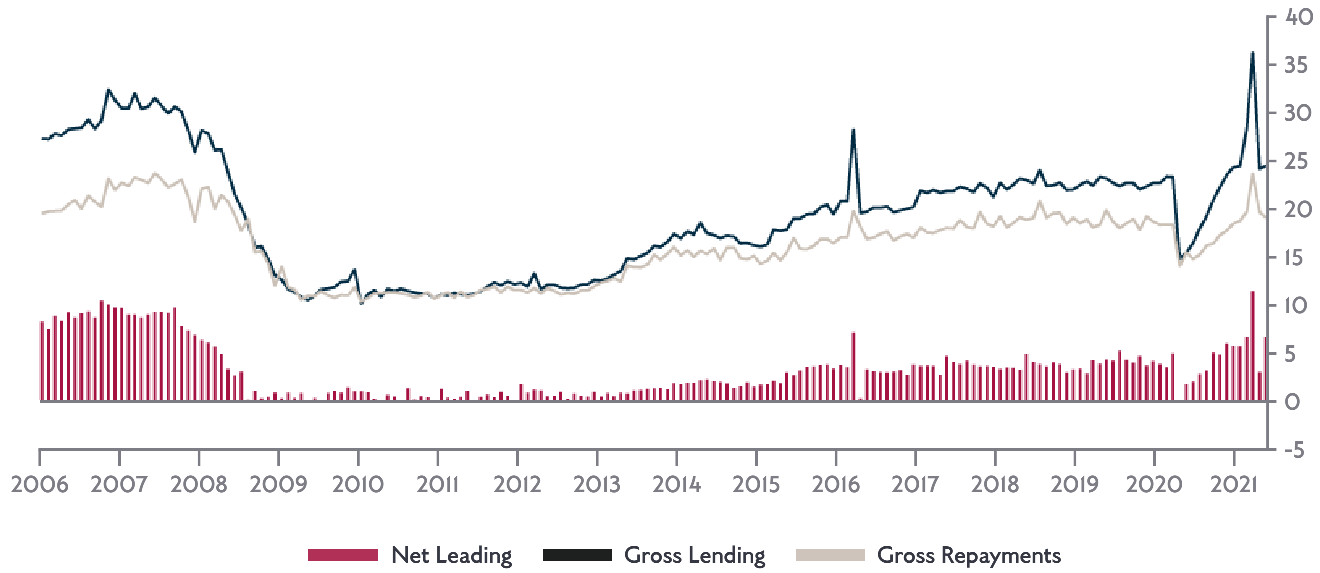






**CHART 1: MORTGAGE LENDING**

SEASONALLY ADJUSTED FLOWS




Source: Bank of England ("BofE") – Mortgage lending

Since our last report issued in January, the government have continued to influence the housing market with changes to mortgaging criteria and the extension of the stamp duty holiday.

On 3 March, the Chancellor of the Exchequer announced a new 95% mortgage guarantee scheme, enabling homebuyers to secure a mortgage with a 5% deposit. Simultaneously, he extended the stamp duty holiday to 30 June 2021.

The stamp duty holiday extension was made at the 11th hour and too late to reverse the falling prices in March and April 2021. However, statistics illustrate that both announcements caused a flurry of buyers to re-enter the market, with mortgage approvals increasing from 83,400 in March 2021 to 86,900 (4%) in April 2021, after having thought they failed to take advantage of the tax relief.

Many experts are of the opinion that the extension to stamp duty has allowed homebuyers to re-ignite and close transactions and so the ending of the holiday is not foreseen to impact the house price index. However, some experts do believe that house prices will fall in the second half of 2021, principally due to the UK coming out of restrictions causing consumer behaviour to shift from saving to spending.

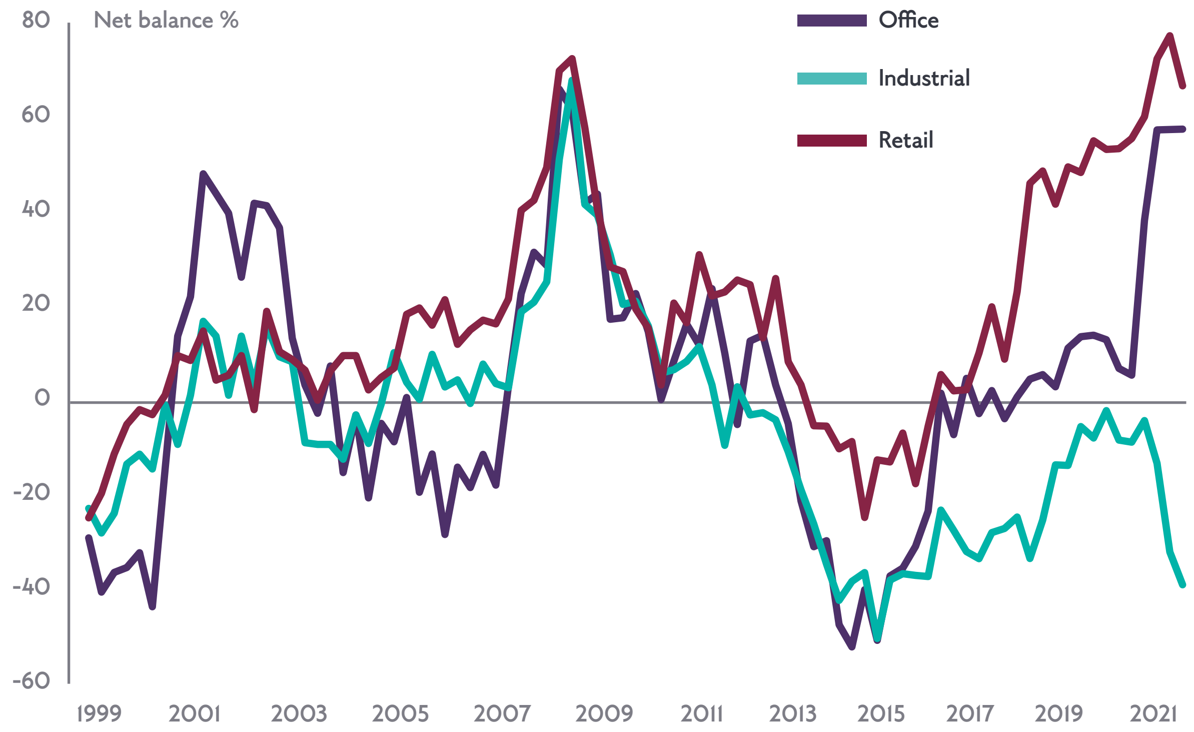
In addition, as inflation rates threaten to rise, the BofE may be forced to raise the base interest rate, resulting in the cost of debt to increase.

### THE COMMERCIAL SECTOR

The commercial sector has fared far worse than the residential sector. As the pandemic continues to push back the day of "freedom", businesses are unable to operate at full capacity. To analyse the recent performance of the commercial sector we have split it in to three key industries: retail, office space and industrial.

> The Chancellor of the Exchequer announced a new 95% mortgage guarantee scheme, enabling homebuyers to secure a mortgage with a 5% deposit.

## UNOCCUPANCY



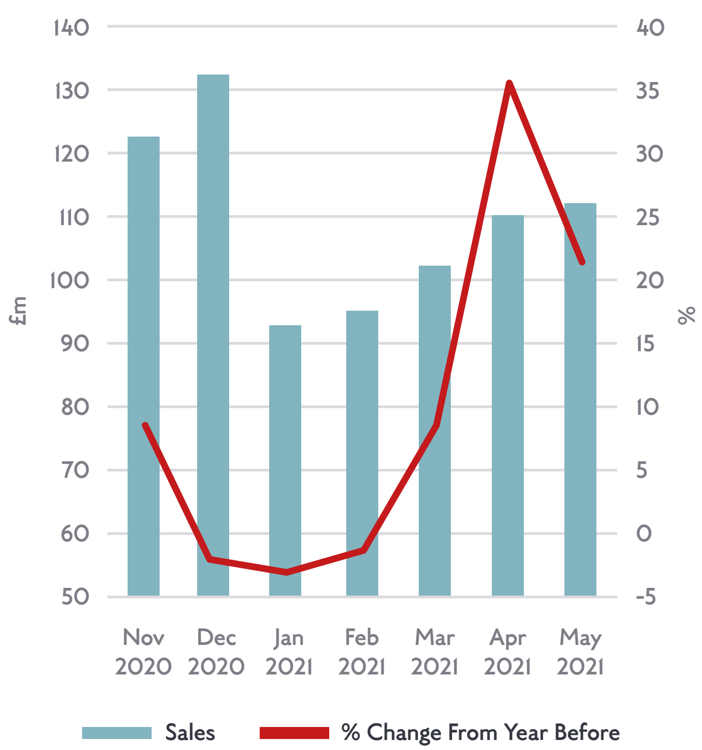

Source: RICS – UK Commercial Property Market Survey

## Retail

Retail stores continue to suffer the most from the pandemic. Similarly to residential properties, the news of Brexit saw store unoccupancy rise in 2016, however the pandemic accelerated this rise over the last year ending March 2021, with unoccupancy 75% higher than pre Brexit. Each event did however cause unoccupancy to rise for different reasons, with Highstreet stores having to close or move to online only as a result of footfall restrictions caused by the pandemic, whereas Brexit brought upon business strategy changes resulting from the long term impact.

However, there is light at the end of the tunnel as early data suggests footfall in retail stores is rapidly rising, with a month on month growth of 5.2% since February 2021. In addition, the continual success of the vaccines has committed the government to allow all retail stores to open, albeit reduced capacity until the new forecast end of lockdown on 19 July 2021.

## ALL RETAILING, EXCLUDING AUTOMOTIVE FUEL










## Office space

The "new normal" of remote working has seen employers and employees embrace the long term outlook of this way of working with a recent BBC survey showing 74% of companies plan to continue remote working for the foreseeable future. There are some large companies like Goldman Sachs, however, who expect employees to return to offices this year.

The pandemic also brought an unexpected challenge for companies with staff demanding high quality, spacious and high tech offices. The upscaling of technology and comfort of the offices come at a high cost with Oktra, an office designer, stating that the current average fit out cost for a 10,000 sq ft office is costing more than £1,000,000.

## Industrial

The industrial sector includes warehouses and logistics centres. Over the last year the occupancy has risen dramatically, largely due to the surge in online shopping requiring more logistic centres, as well as retail stores requiring storage space to hold products whilst the shops are shut.

The forecast for industrial space is stable as it is expected consumers will continue to rely on online shopping.

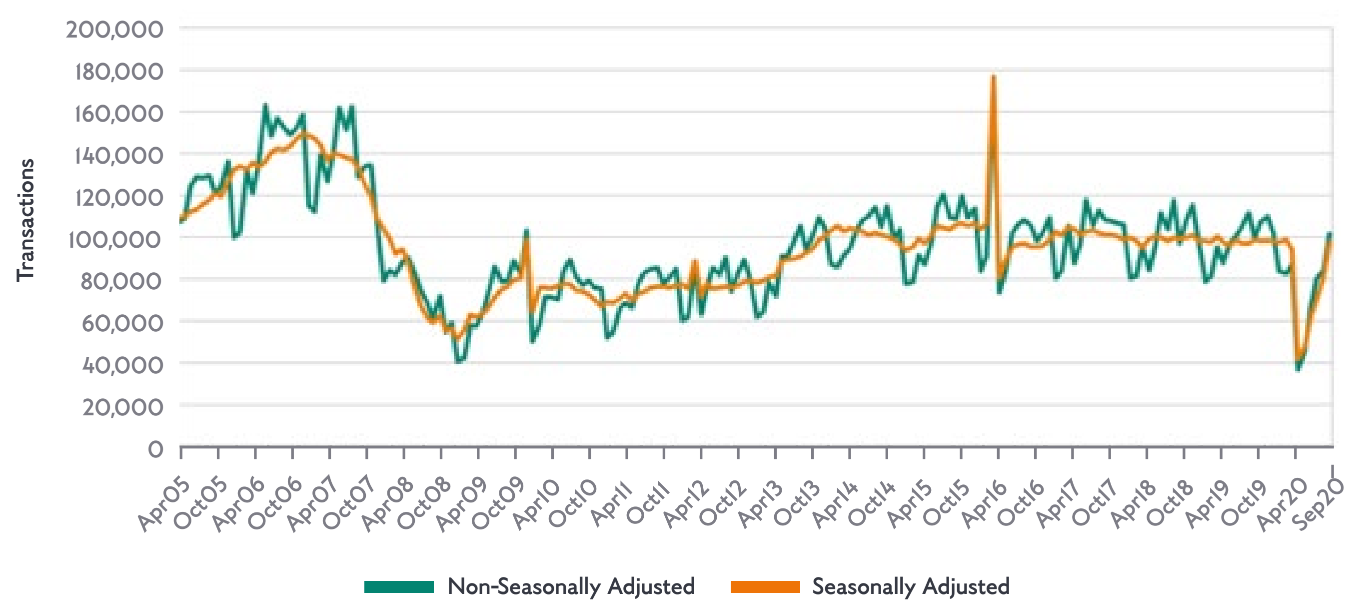
## PROPERTY SERVICES

### Estate Agents

The overall drop in property transactions for the 14 months from April 2020 has put pressure on the estate agent industry. During the first lockdown of the pandemic, total furloughed estate agents peaked at 152,400 in May 2020, and despite this number reducing significantly to just over 14,000 by October 2020, the consequential impact on revenue was substantial. The magnitude of the impact on revenue saw the nine months to December 2020 down 20.5% compared to the same period in 2019.

As a result of the hard year where transactions plummeted due to restrictions, Industry research company, IBISWorld, predicts industry revenue will increase by 2.2% over the next 12 months. The long-term prospects of the industry are also promising, with revenue predicted to increase at a compound annual rate of 2.3% in the five years through to 2025-2026.

## HISTORIC UK RESIDENTIAL PROPERTY TRANSACTIONS (2005 TO 2020)



## CONSTRUCTION SECTOR

Despite a record-breaking decline in industry growth at the outbreak of the pandemic, the industry experienced stronger growth in the latter half of 2020, which has continued into 2021. Whilst ONS data shows that industry output declined in April 2021 by 2% compared to the previous month, industry output remains 0.3% above February 2020 (pre-pandemic) levels. When assessed across a three month period, construction output in the three months to April 2021 actually grew by 5.1%. This growth has been fueled by increased new (and re-starting of previously delayed) work, and a general increase in confidence and demand across the industry.

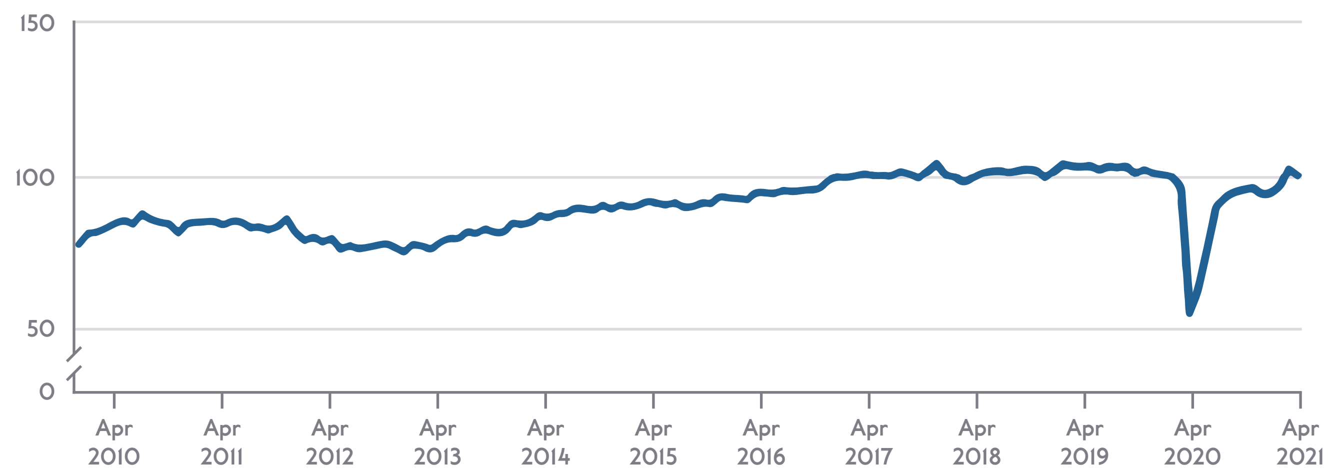
Provisional estimates indicate that growth is expected to continue throughout 2021, and into 2022 with the Construction Products Association forecasting growth of 12.9% and 5.2% respectively. However, there are a still number of obstacles to growth expected for this sector, including a shortage of key raw materials and a decline in the availability of EU migrant labour on which the industry heavily relies. Similarly, a recent ONS survey conducted between 17 and 30 May 2021 revealed that 29% of firms in the construction sector were experiencing revenues lower than what would be 'normal' for this time of year, with 15% of firms stating they had either temporarily or permanently ceased trading.

## M&A

The real estate services industry has experienced substantial M&A activity over the past few years. Whilst the outbreak of the pandemic originally subdued M&A activity in this sector, with our previous report identifying only 39 deals in the UK from the six-month period from 1 June 2020 to 1 December 2020, in the six months following this date there have been a total of 68 deals.

Similarly to our last report, recent deals have primarily been driven by real estate agency acquisitions from existing firms looking to consolidate their position in the market. In March, Foxtons (UK based real estate services provided) acquired real estate agency Douglas and Gordon. This is one of four acquisitions and one early stage investment made by Foxtons since early 2020 in the real estate and online market. Additionally, investments in online property platforms have continued to dominate market activity, with Nested receiving later stage VC funding from Axel Springer in March, and Movebubble receiving £1.4m in VC funding from undisclosed investors in May.

**INDEX 2018=100**




Monthly all work index, chained volume measures, seasonally adjusted, Great Britian, January 2010 to April 2021







## Highlights in M&A activity since 1 December 2020

| Date | Company | Lead Investor | Amount |
|---|---|---|---|
| 07 Dec | **Powell Estate Agents** | Charters Commercial | Undiscosed |
| 17 Dec | **Property Investors Network** | Genius Group International | £10m |
| 31 Dec | **Lisa Pollard Lettings** | The Grantley Group | Undiscosed |
| 19 Feb | **Dexters London** | Oakley Capital | £140m |
| 02 Mar | **Douglas & Gordon** | Foxtons | £14.25m |
| 08 Mar | **Countrywide (Property services)** | Connells | £134m |
| 19 Mar | **Hunters Property Group** | Property Franchise Group | £24.2m |
| 31 Mar | **Nested** | Axel Springer | £5m |
| 01 Apr | **Boomin** | Channel 4 Ventures | £25m |
| 01 Apr | **Nicholas Humpreys** | Belvoir Lettings | £4m |
| 06 Apr | **Lifestyle Property** | Mr Property Box | £0.115m |
| 14 May | **Tilia Homes** | Terra Firma Capital Partners | £110m |
| 31 May | **Movebubble** | Undisclosed | £1.41m |

## Conclusion

The government interventions of mortgage schemes and extensions to the stamp duty holiday have arguably delayed the "true impact" of the pandemic and therefore it is still too early to fully assess the long-term impact on the industry. Experts do however believe the 'true impact' will be felt across all sub-sectors once government support for both people and businesses end over the course of 2021, after which the industry will have to adapt to a 'new normal' of working practices and consumer preferences.

The real estate service industry has experienced substantial M&A activity over the past few years.

# EMPLOYMENT STATUS: EMPLOYED OR SELF-EMPLOYED ADVICE FOR CONTRACTORS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**The construction industry has traditionally used sub-contractors to provide their labour and skills to get the project done.**

Normally sub-contractors will provide their services either as a sole trader, through a partnership or through a limited company.

The use of a partnership or limited company sub-contractor comes with the unique issue of the off-payroll rules affectionately referred to as IR35 and it would need a whole separate article to cover the compliance needed to meet that specific legislation.

This article looks specifically at the engagement of sole-trader sub-contractors by contractors in the construction industry and what to look for to avoid issues with HMRC who are very interested in the operation of CIS scheme and the engagement of self-employed sole-traders from an employment status point of view.

Employment status is not a matter of choice. The facts surrounding a working relationship will determine whether the worker is an employee or self-employed.

Getting employment status wrong can have serious financial consequences for a contractor. If HMRC review the contractor's records and rule the sub-contractors were not genuinely self-employed but rather an employee, the contractor will be liable for PAYE tax and National Insurance Contributions (NIC) considered due in respect of the payments made. HMRC can look to go back a number of years to recover the tax and NIC considered due. In addition to the liabilities due interest and penalties will also be charged.

Contractors holding Gross Payment Status (GPS) stand to lose that status should incorrect employment status be identified during a HMRC compliance review resulting in the contractor suffering a 20% deduction on the payments received from their contractors.

When engaging a sole trader sub-contractor, the contractor must consider the terms and conditions of the engagement and decide whether that individual is self-employed or employed.





Unfortunately, the law does not define 'self-employment' or 'employment'.

The terms and conditions of the particular engagement will determine whether the contract is one of employment or self-employment. If the individual is engaged under 'a contract of service' then they will be an employee and CIS is not appropriate but rather PAYE applies. Only genuine self-employed sub-contractor fall within CIS.

A contractor is required to sign the monthly CIS return stating that employment status of all sub-contractor on the return has been considered and that they are satisfied they are genuinely self-employed in relation to the work undertaken. It is worth bearing in mind that HMRC can issue fines of up to £3000 for incorrect CIS returns which includes individuals who are not correctly self-employed.

Legislation does not define what constitutes a 'contract of service' or a 'contract for service' but rather employment status case law handed down by the Courts over the years is used to determine status.

Various factors help determine whether a contract is one of employment or self-employment and there are certain indicators that help to determine whether the particular engagement is one of employment or self-employment.

## COMMON INDICATORS OF EMPLOYMENT

- Contractor has the right to (even if rarely used) control what the worker has to do, where the work is carried out, when the work is done and how the work is carried out.
- Worker supplies only small tools, no significant equipment or materials.
- No possibility that the worker will suffer a financial loss, for example the worker does not risk any of his own money.
- Worker has to provide personal service that is he is expected to carry out the work himself and cannot provide a substitute and/or additional help to carry out the work.
- Worker has no business organisation, for example business premises, stock, materials, or own workforce.
- Worker is paid by the hour, day, week or month.

### COMMON INDICATORS OF SELF-EMPLOYMENT

- Within the overall deadline, the worker has the right to decide how the work is carried out and when the work will be done.
- Worker tenders for a job and if the job ends up costing more than they originally estimated, he will bear any additional costs.
- Worker has the right to hire other people to either carry out the work or work with him. Those individuals being answerable to him and are paid by him to do the work.
- Worker is paid an agreed amount for the job regardless of how long it takes.
- Worker supplies the materials, plant or heavy equipment needed for the job.

From these answers the contractor should make the decision whether the individual is in business on his own account (self-employed) or an employee of the contractor.

HMRC has a tendency to place greater emphasis on the right of control as to what, when, where and how the work is carried out, the right to provide a substitute and whether it there is financial risk.

HMRC's has developed a tool called CEST (Check Employment Status for Tax) that can be used to help establish the employment status position. Accessible through the Gov.uk website and available for anyone to use to check an employment status position.

CEST asks a series of questions regarding the working arrangements of the subcontractor and will provide an opinion of the individual's employment status position.

Clearly the questions need to be answered accurately to reflect the terms and conditions under which the individual is providing their services otherwise any opinion will be invalid. HMRC will usually be bound by the CEST outcome provided it was completed accurately.

A copy of the status outcome should be downloaded and kept for future reference as this will need to be produced if HMRC question the employment status position.  HMRC may still look to challenge the employment status position even with an ESI outcome of self-employment but nevertheless it would be for HMRC to show that the results cannot be relied upon.

Ultimately getting the employment status position wrong can have disastrous consequences for a contractor's business if HMRC are successful in re-classifying the self-employed workforce as employees.

HMRC's has developed a tool called CEST that can be used to help establish the employment status position.


# A SECOND LOOK AT NEW LOOK?

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**On 26 August 2020, a company voluntary arrangement (the "CVA") was proposed (the "Proposal") by New Look Retailers Ltd ("New Look").**

It was approved by its creditors on 15 September 2020. However, the CVA was challenged by various landlords of New Look who opposed the Proposals' terms. The Claimant's grounds of challenge were considered by the Zacaroli J, in the case of New Look Retailers Ltd.

This is not the first time a high-street retailer has entered into a CVA to the detriment of the landlords in comparison to other creditors. Nevertheless, landlords will be concerned by the dismissal of the Claimants' challenges in New Look Retailers, as well as similar findings in the case of Re Regis UK Limited (also heard by Zacaroli J) and Re Virgin Active Holdings Ltd (a Part 26A restructuring case). The decision in New Look is now being taken to the Court of Appeal.

## THE KEY FACTS

The CVA was part of a wider restructuring of the New Look group.

New Look's secured debts included "SSN Notes" of £441m. The unsecured debt included rental and service charge liabilities, trade debts and employee debts.

Under the Proposal and reflective of other retail CVAs, New Look's creditors were categorised, and their claims dealt with as follows:

### "A Landlords"

Landlords of New Look's distribution centre, premises considered critical to the Group's continued operations. The A landlords' debts were largely uncompromised by the terms of the CVA. 100% of the A Landlords supported the Proposal.

### "B Landlords"

Landlords of stores where either (i) the property costs were considered above-market or (ii) moving to a turnover-based rent would make the stores more viable. The Proposal provided that:







1. B Landlords' rent arrears claims (but not service charges) would be released in full.
2. In future, B Landlords would receive a turnover rent instead of the rent provided for in the leases for a 3-year period, followed by either a turnover rent or the market rent (whichever is higher).
3. B Landlords were given an option to terminate their leases if they found the modified terms unacceptable.

B Landlords gave a mixed response to the CVA Proposal, with only one sub-group giving 75% support for the CVA. The rest supported the CVA by either less than the requisite 75% or less than 50%.

### "C Landlords"

Landlords of stores which were to be vacated because they were not viable for New Look.

- Rent arrears owed were compromised in full, although insurance remained recoverable whilst New Look remained in occupation.
- C Landlords were also granted the option to terminate their leases.
- 55% of C Landlords opposed the Proposal.

### "K Noteholders"

The holders of the unsecured portion of the SSN Notes.

- The K Noteholders were entitled to vote in the sum of £273.4m. A secured creditor may vote in a CVA in respect of the unsecured portion of its debt, so this was a big vote and a deciding factor in approving the Proposal.
- K Noteholders' claims were generally unaffected by the CVA.
- K Noteholders (unsurprisingly) all supported the Proposal.

Other classes of unsecured creditors: including employees and trade creditors. In general terms, key creditors for the ongoing trading of New Look were identified and paid in full to keep the business operating.

Based upon a turnout of 81.4%, the CVA was passed by the requisite 75% majority of creditors and implemented. Predictably, the supportive creditors were those whose claims were not compromised heavily, including K Noteholders. Creditors whose rights were heavily compromised, including B and C Landlords, were more likely to oppose.

The Court accepted that, if the CVA had not been approved then the most likely alternative outcome for New Look's business would be a pre-pack administration following a short period of marketing, resulting in a return to unsecured creditors of £0.1p in the £.

## THE CLAIMANTS' GROUNDS OF CHALLENGE

### The "Jurisdictional Challenge"

The New Look CVA wasn't a composition or arrangement within s1(1) IA 1986; on its true analysis it was several separate arrangements with different groups of creditors.

There wasn't enough "give and take" between New Look and the creditor groups.

New Look's new termination right exercisable against B Landlords and C Landlords interfered with their property rights.

**Court Response**
This challenge failed. The Court found that the fact that the Proposal treated different groups of creditors differently did not take it outside s1(1) IA 1986. The Court was also unpersuaded by any perceived lack of "give and take" by New Look, because the CVA offered a better outcome than administration (the likely alternative if the CVA failed). New Look's new termination rights also had not interfered with the landlord's property rights; landlords were not obliged to accept surrenders of their leases.

### The "Material Irregularity Challenge"

There were irregularities in the calculation of landlords' claims for voting purposes.
There were omissions and inaccuracies in the Proposal, such as K Noteholders receiving equity as part of the wider group restructure and a management incentive plan.

**Court Response**
This challenge was also unsuccessful. Landlord's claims had been calculated in accordance with the Insolvency Rules 2016, which only require the chair of the CVA meeting to give unascertained claims a £1 value, unless he/she decides to give a higher estimated minimum value. The fact that landlords' claims for future rent had been discounted by 25% did not lead to a "material irregularity" as it had been applied to all landlords equally (Re Regis followed this and the Court found that a much sharper 75% discount in that case was unjustified but not materially irregular). The non-disclosures in the Proposal should not have occurred but did not lead to a material irregularity either.

### The "Unfair Prejudice Challenge"

The requisite 75% majorities for the approval had been obtained only by reliance on the votes of creditors whose claims were not impaired by the CVA.

Creditors whose claims were compromised received different treatment to those whose were not.
The modifications to the terms of the leases were unfair.

**Court Response**
This challenge also failed. Whilst it is an important consideration on the question of unfair prejudice if a Proposal passes by relying upon votes of those creditors whose claims are treated differently to those prejudiced, that alone does not mean the prejudice suffered is unfair. As for the modifications to the terms of the leases, under the Proposal the Claimants were given the right to terminate their leases if they felt the modifications to their leases unfair.

## COMMENTARY

Landlords are frequently at a disadvantage compared with other creditors when their tenants become insolvent. A bank who grants a £5m rolling facility to a retailer will typically benefit from security which grants them advantages as a creditor compared with a landlord who has leased premises for £5m, notwithstanding the parity of the two investments. For example, a CVA cannot restrict a secured creditor's ability to enforce its security without that creditors' consent. Furthermore, in a liquidation / administration context secured creditors would be paid, in accordance with their security, before the unsecured creditors.

In CVAs such as New Look's and Regis', the disadvantage of landlords is further exacerbated because future rents are effectively undervalued for voting purposes whereas the unsecured debts to lenders can be decisive. This can be seen in New Look by comparing the position of B and C Landlords with that of K Noteholders. It is understandable why landlords see this as unfair, and will be a source of disappointment that notwithstanding this is not necessarily "unfair prejudice".







The Court of Appeal's decision will therefore be very important for landlords. We do not know the basis upon which this is being pursued, but there are a number of issues which arise from the High Court Judgment which may be suitable grounds for appeal. For instance:

Even a prejudicial CVA Proposal may be better for landlords than no CVA, if no CVA would lead to a swift shut-down of the retailer's business, followed by a sale of business/assets with minimal or no return to creditors. In New Look Retailers, the Judge focused upon the likely alternative (a swift shut-down) when determining whether the Proposal was unfairly prejudicial for the Claimants. However, just because a no-CVA alternative may be more detrimental for landlords does not mean:

1. That the terms of the Proposal are fair.

2. That the Proposal could not be modified in order to be less prejudicial to landlords, whilst remaining acceptable to other creditors.

Similarly, in both New Look and Re Regis, the Judge held that there was no unfair prejudice to landlords where the landlords are given the right to terminate their leases. This gives landlords the option to recover their premises if they think the modifications to their lease imposed by the Proposal is unfair.

However, a right to terminate is an imperfect remedy in circumstances where the Proposal is much more favourable to other creditors than landlords: landlords are effectively being given a take take-it-or-leave-it offer rather than a more balanced alternative CVA. A better remedy would be for the Court to assess whether there could be a modified proposal which is fairer to landlords and also acceptable to other creditors. However, the Court may be reluctant to redraft a Proposal which has already been supported by the majority of creditors.

A new look at New Look in the Court of Appeal may lead to consideration of these issues and a better outcome for landlords. Until then, it seems that CVAs on the high street will continue to sound alarm bells for landlords.

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# UK GOVERNMENT EXTENDS MORATORIUM ON COMMERCIAL RENTS – BUT WHAT DOES THIS MEAN FOR LANDLORDS?


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**New rules will ringfence commercial rent arrears until 25th March 2022, providing much-needed support for many retailers as they arrange realistic repayment plans.**

This means that landlords will be prohibited from taking steps to evict commercial tenants on the grounds of forfeiture for non-payment of rent. The extension comes as welcome relief for thousands of businesses that were facing mounting rental bills and potential eviction from 1 July, which is when the current grace period for unpaid commercial rents was originally due to end. However, many landlords have already voiced concerns that the new rules will encourage businesses to avoid rental payments even though they have resumed operations.

Chief Secretary to the Treasury Stephen Barclay announced the extension as a vital step to support industries which have been forced to close for prolonged periods throughout the pandemic. This gives retail, hospitality, live events and other industries hit hardest by national lockdowns a potentially smoother path to recovery, affording them more time to recover losses over the next nine months.

Mr. Barclay also stressed that all commercial tenants should start to pay rent again in accordance with the terms of their lease as soon as restrictions are removed on their sector. The **latest estimates from the FT** suggest UK businesses have already amassed more than £6bn in rental debt. Naturally, restrictions being removed may not coincide with a return to normal trading at pre-pandemic levels!

## ARBITRATION PROCESS TO SETTLE UNRESOLVED DISPUTES

As part of the moratorium extension, the government also announced it would be **establishing a binding arbitration process to resolve any impasses on rent arrears and an agreement cannot be reached**. This process will impose a compulsory settlement between landlord and tenant.

The new system should be in place for when the moratorium is lifted on 25 March 2022. It will be delivered by private arbitrators, in accordance with specific guidelines informed by new legislation.

This process has been underlined by legal experts as a watershed moment in the way that rent arrears are handled. It's also seen as a precursor to the review of commercial landlord and tenant legislation which is scheduled for later this year – namely the Landlord & Tenant Act 1954 Part II, different models of rent payment, and the impact of COVID-19 on the market – though the long-term implications of these developments remain to be seen.

## WHAT STEPS CAN COMMERCIAL LANDLORDS TAKE?

Naturally, commercial landlords will be looking for the swiftest possible solution to recover any rental debt accrued throughout the pandemic, or indeed to recover early possession of their property from struggling tenants or businesses going into administration.

Their first step should always be to discuss the situation with the occupier and determine the current position of their business and ability to deliver rent over the coming nine months. Ongoing negotiation is key and often leads to a solution on which all parties can agree; although if these discussions do not prove fruitful then it pays to seek the advice of an experienced commercial leasing advisor before taking further action.

It's also worth noting that until 25 March 2022, landlords need to wait until 554 days' rent remains unpaid to exercise Commercial Rent Arrears Recovery (CRAR). That 554 day period has not been extended under the new rules, however, it does mean that if a tenant has paid no rent between 25 March 2020 and 28 September 2021 then they will need to start paying rent again from 1 October 2021 to avoid CRAR.

## GET IN TOUCH

**At Gerald Edelman, we regularly assist negotiations between tenants and landlords regarding rent arrears, always aiming to arrive at a mutually beneficial settlement.**

This includes supporting tenants with the preparation of financial models, assessing cash requirements and determining whether all terms are within the constraints of the tenant's financial situation.

If you're a landlord or tenant looking for professional advice, get in touch today to talk through your current situation and weigh up your options with one of our experienced business advisors.

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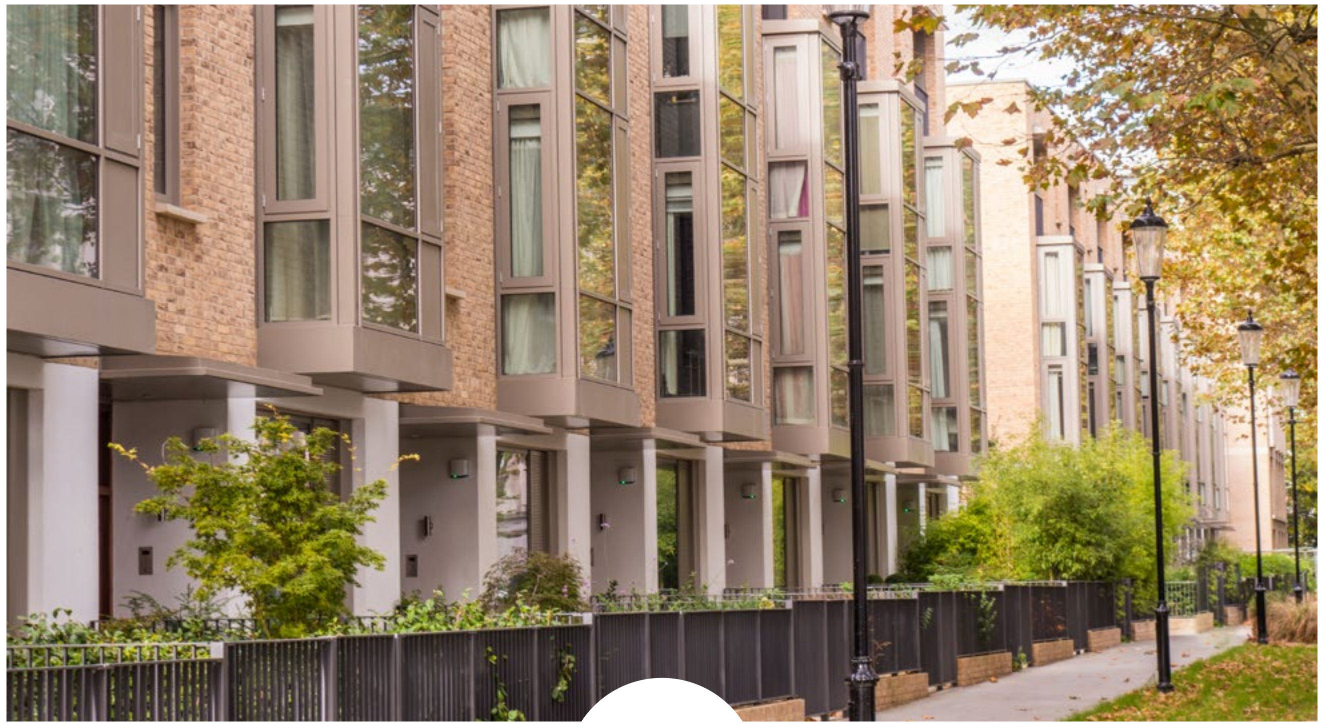

# SIMPLIFYING VAT LAND EXEMPTION


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**As a rule, supplies of land have historically been exempt from VAT, derived from Article 135 of Directive 2006/112, being EU law. Over the years this exemption has been narrowed due to the widening of various exceptions, the introduction of an option to tax over 30 years ago, and evolving caselaw.**

Consequently, anyone involved in land and property transactions is likely to have come across difficulties with VAT: whether it's a query about an option to tax, if VAT should be charged on a transaction or if input tax be recovered. It can be a complex area for VAT where mistakes can be particularly costly.

Currently, many of the issues centre around the option to tax; the sale of a piece of land or commercial property over three years old is exempt, unless an option is made meaning the supply of land is now taxable (standard rated).

The original legislation for the VAT land exemption had only four exceptions, there are now 15 exceptions and 26 sets of notes. Much of this legislation has been derived from HMRC addressing what they perceive as loopholes in the original exemption, primarily addressing the issue of when land being supplied is incidental to the main supply. This leads to difficulty in establishing the VAT liability of a land-type supply.

In response to this apparent problem, HMRC has issued a consultation paper, published on the 12 May 2021, that enables people to give both feedback and suggestions on the future of the VAT land exemption. **This paper** contains some 'solutions' including;

- Making all relevant transactions exempt and removing the option to tax.
- Making all relevant transactions at a reduced rate.
- Making all transactions standard rated with an option to exempt.
- Defining short-term or minor interests as subject to VAT.
- VAT liability linked to Land registry.
- Making most transactions taxable but exempt certain supplies.





HMRC wish to receive feedback about any experience with VAT and the rules around land and property as well as providing suggestions of any areas of particular difficulty, the deadline is 3 August 2021. The consultation paper includes further detail on the pros and cons of the above suggestions and is an excellent opportunity to be part of the consultation process. The above hyperlink allows anyone to access the questionnaire and therefore interested parties can make their comments known.

## Commentary

In general, I welcome anyone that makes my life a little simpler, and therefore it is quite tempting to view this consultation as an effort to simplify the rules to make our lives that little bit less complicated.

However, the land exemption is, in my opinion, a welcome feature of VAT law. The 'complication' that HMRC recognise in their paper has mainly been caused by their actions, by adding various exceptions over the years as well as narrowing the exemptions through caselaw. In addition, the option to tax process has become frustrating because of the inability of HMRC to provide an efficient and user-friendly process to either notify the election or to find out if one has been made in the past.

My concern is that HMRC will attempt to make most transactions taxable. Whilst this may in theory simplify the tax it will effectively mean that most land transactions will attract VAT, and that cost will in many cases be passed on to the ultimate consumer.

There will also be an increase in compliance as business will need to register for VAT even when buying small pieces of land to recover VAT charged.

In addition, SDLT will be levied upon the VAT inclusive price. Not only will land rise by 20% to reflect VAT, but there will also be additional SDLT to pay as well.

This consultation is of course an indirect consequence of leaving the EU, as the UK is no longer bound by constraints and protections provided by EU law. I have mentioned this point before in seminars and articles but am surprised it has become a feature so quickly.

In my opinion this consultation is the shape of things to come. I suspect HMRC will be looking at 'simplifying' other areas of VAT, such as finance. There is unlikely to actually be any simplification; any major change in VAT law brings added complications, but it is likely that any such move will broaden the items that VAT will be charged on.

Gerald Edelman will be making their thoughts known. If you do not want to complete the questionnaire but have any thoughts on this issue please pass them to me and I will attempt to include them in any response.

Finally, if you would like assistance in unravelling the complexities of VAT the dedicated indirect tax team at Gerald Edelman are always available!

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# SUPER DEDUCTION NOW AVAILABLE FOR PROPERTY DEVELOPERS


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## The Government's U-turn on super-deduction will now also benefit commercial landlords.

At the 3 March 2021 Budget the Chancellor made an announcement of new temporary capital allowances for companies, with aim of encouraging capital spend during the next two years, namely the 130% super deduction and the 50% first year allowance (SR allowance).

This initial rule however excluded property lettings companies benefiting from the scheme. Since then the government took a U-turn making a last-minute amendment to the Finance Bill, resulting in commercial landlords now being able to benefit from the temporary 'super' deduction. This allows commercial landlords who are constructing new buildings or converting, extending, or refurbishing existing ones to benefit with the main aim to kick start the post Covid-19 recovery.

From 1 April 2021 until 31 March 2023, companies who invest in qualifying machinery and plant assets will either be entitled to a 130% first year capital allowance (plant and machinery) or a 50% first year allowance for 'integral assets' that meet the qualification for the 'special rate,' which must be claimed within the year and is summarised below.

| Capital Allowance | Rate of Relief | Examples |
|---|---|---|
| **Super Deductions (SDs)** | 130% for main plant and machinery pool expenditure | Firefighting systems; security systems; data installation; furniture, fittings and equipment; welfare facilities |
| **Special Rate (SR) Allowances** | 50% for special rate expenditure | Lifts; lighting; heating, ventilation and cooling systems; thermal insulation; water systems |







It is also a qualifying requirement that expenditure must be on 'background' assets. That is, expenditure which is expected to be installed in or on the site of a building which contribute to its functionality. Whilst this definition encompasses a wide range of assets, a significant number of these items will be 'integral features' rather than assets on which the Super Deduction will be available. Therefore, for some eligible lessors the relief available will purely be a timing difference.

An investment of £200,000 in plant and machinery meeting the Super-Deduction tests will generate tax relief of £49,400 in the year of expenditure, and for expenditure of £200,000 on integral features, tax relief worth £19,000 will be available in the year of expenditure, with residual relief through capital allowances at a rate of 6% per annum.

The allowances can be claimed by corporate taxpayers and include non-resident landlords (who must be corporates), but not individuals and partnerships. Note that the latter can still benefit from the standard rates of relief plus the annual investment allowance (AIA) which stands at £1m for expenditure on both main pool and special rate pool items until the end of December 2021, thereafter, reducing back to £200,000.

Early tax planning and seeking advice is therefore key to ensuring that the right information is collated, and entitlement issues addressed up front. There is also the potential for partial clawback of the 30% added relief for super deductions, if the asset is sold within the period in which the temporary relief ends. Careful consideration will need to be given by commercial landlords in assessing their capital expenditure programme and timings to maximise benefiting from this relief, which can easily be overlooked, therefore guidance from your tax advisor is recommended.

Should you require any further advice relating to the super-deduction, or tax advise relating to your commercial properties and assets, get in touch with Gerald Edelman's tax and advisory experts.

Early tax planning and seeking advice is key to ensuring that the right information is collated.

# FIVE UK PROPERTY INTERNATIONAL TAX TIPS

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## 1. Evaluating the appropriate structure to own/invest in UK property

The first crucial step when considering the purchase of UK property is to establish the best structure through which to own such property – whether it's in individual names, joint names, via a UK company, via an offshore company, via an offshore trust or via any other structure. There is no one size fits all scenario and establishing the most optimal structure will entirely depend on your short, medium and long-term goals and aspirations.

We work with our clients and understand their personal and business goals to then propose and suggest tax efficient property ownership structures. For example, ownership via an offshore trust would be beneficial when considering succession planning, or ownership via an offshore company would be beneficial for developers or long term investors, but one needs to be aware of the ever-changing legislation especially in recent years in respect of UK real estate especially when ownership is by non-resident individuals, trusts or companies.

Consideration given to financing is also important and this will also play an important role when evaluating the appropriate structure along with confidentiality as to what is maintained on public registers and requirements.

## 2. Tax implications when purchasing a UK property

It is important to understand the various tax effects when purchasing UK property. This includes considering Stamp Duty Land Tax (SDLT) and understanding the rate of tax as different rates are applied when purchased via a company as opposed to an individual name, and when purchasing commercial property vs residential property.

Furthermore, a 2% surcharge on SDLT was introduced from 1 April 2021 for buyers of residential property in England and Northern Ireland who are not resident in the UK. The surcharge could also apply to certain UK resident companies that are controlled by non-UK residents.

> It is important to understand the various tax effects when purchasing UK property.







Consideration should also be given to another tax called the Annual Tax on Enveloped Dwellings (ATED) which applies to companies which own UK residential property worth more than £500,000. There are exemptions that companies can claim provided certain conditions are met and these should be looked at carefully. Even though exemptions are claimed, ATED returns are required to be filed.

## 3. Tax on Non-resident landlords

Non-resident landlords are subject to UK tax on UK rental income on UK real estate at rates of up to 45%. Holding UK rental properties (residential or commercial) through an offshore company can reduce the rate of tax on UK rental income to 19%.

Furthermore, rents received by non-UK resident landlords are subject to 20% withholding tax unless an application is made to HMRC under the non-resident landlord scheme for rents to be paid gross. The 20% withholding does not discharge the non-resident's tax liability if they are subject to tax at 45%, rather it is used as a credit against their tax liability. Therefore, understanding the obligations for non-resident landlords, when they need to register with HMRC, when tax returns should be filed, under what tax regime such non-residents would fall under and how rents are collected by managing agents is very important.

## 4. Disposal of UK properties

Gains on disposals of residential property may be subject to UK capital gain tax (CGT), corporation tax (CT) or non-resident capital gains tax (NRCGT) (or a combination of these). Many changes have been introduced in recent years in respect of the rate that could be applied, the valuation date that should be used when calculating the gain, the reporting and payment requirements and deadlines. To give you an example, tax rates could vary from 18% or 28% for non-resident individuals to 28% for non-resident trustees to 19% for non-resident companies. Therefore, it is vital that proper advice is taken in order to avoid unnecessary penalties.

it is also important to understand the UK tax implications arising when disposing of an interest in property rich vehicles (i.e. companies, trusts, etc) which derive their value directly or indirectly from UK land and property. Additional compliance and tax charges falling within the realm of capital gains tax or corporation tax could arise unless statutory exemptions apply. Therefore, it is important to assess the existing investment portfolio and have a good understanding of the assets base of any prospective investments.

### 5. UK inheritance tax on ownership of UK property

UK inheritance tax (IHT) applies to UK assets which are directly owned, regardless of the residence or domicile status of the owner. IHT is chargeable on death at 40% in relation to assets held at death.

Prior to 6 April 2017, owning UK residential property through a non-UK company provided an effective IHT shelter for individuals who were not deemed to be domiciled in the UK. This is no longer effective from 6 April 2017 where a UK residential property is owned by a non-UK company directly or indirectly.

Under these new rules, the value of the shares attributable to the UK residential property is within the scope of IHT. Similarly, transfers of UK property into trust attract a 20% IHT charge and the UK assets will broadly be subject to a 6% IHT charge every 10 years, and a pro-rated 6% IHT charge on any distributions from the trust. There are quite a few details surrounding this topic and therefore expert advice is highly recommended.

For further information and advice on any of the above, speak to our International Tax team today.

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# OPTIMISM RETURNS TO THE PRIME CENTRAL LONDON PROPERTY MARKET

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**The last three months have seen a continuation of the turbulent market that prime Central London has been experiencing for over twelve months. However, the tide seems very much to be turning, with lockdown restrictions continuing to ease and Freedom Day looming large on the horizon, couple this with a very successful vaccine rollout programme, demand for quality properties is now very high and increasing**

Many agents will be making year on year comparisons with the same quarter last year, this is largely folly as the market was prohibited from functioning properly at that time, but it does give some indication of the stark difference from twelve months ago. We are now seeing the effects of all time low mortgage interest rates, a Stamp duty holiday and the months of prior pent-up demand putting serious upward pressure on London house prices.

The rush to the open space of the countryside now seems a less and less likely long-term option for many households as the myth that working from home can be a solution for large corporations now seems to have been dispelled. A significant number of the large city banks have come out in the media to say they are instructing all their staff that normal working practices will resume with office based working hours to become the norm once again.

Tenants are returning to London in large numbers as the prospect of imminent return to the office and easing of lockdown restrictions has triggered a sharp rise in demand for rented accommodation in and around Central London. Over the last several weeks Landstones lettings department have been inundated with tenant registrations as more and more young professionals head back into the capital to take up new jobs or return to the office of their pre Covid position.

Pubs, restaurants, bars, and entertainment venues have all begun to open their doors and are now crying out for staff to help cope with the surge in demand. The school terms are also back to full functionality bringing many families back to town, this has seen a short sharp increase in demand for larger family homes especially in the catchment areas for good schools.







Going forward into Q3 both Landstones sales and lettings departments are extremely optimistic for the future of the markets. Even with the stamp duty holiday drawing to a close on the 30th of June leaving little time to push a sale over the line before this incentive turn to a slightly less finically lucrative taper relief system, we are predicting strong demand across the board for good property. The numbers of sales generated across prime Central London in May was very close to the 2014 level showing buyers have great confidence in the market for the foreseeable future.

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Tenants are returning to London in large numbers as the prospect of imminent return to the office and easing of lockdown restrictions has triggered a sharp rise in demand for rented accommodation in and around Central London.

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