



Taxation of UK residential property

The tax implications of owning UK residential property depend on a variety of factors, including how it is held (directly, or via a trust or company) and its use (personal occupation or to generate rental income). This factsheet outlines the key points which should be considered, from purchase through to disposal.

Buying the property

Purchases of UK property are subject to Stamp Duty Land Tax (SDLT) if situated in England, Wales or Northern Ireland and Land & Buildings Transaction Tax (LBTT) if situated in Scotland. In addition, from 1 April 2018, SDLT will be replaced in Wales by a devolved Land Transaction Tax (LTT).

SDLT

SDLT on residential purchases starts at 2% for properties valued at more than £125,000 and increases on a 'slice' basis to a maximum of 12%, plus a potential 3% 'surcharge' on all rates where an additional property is purchased (unless it is purchased to replace a main residence, or costs less than £40,000).

HMRC has announced that it intends to consult on the introduction of a 1% surcharge to SDLT rates for UK residential property acquired by non-UK tax residents.

Relief for first time buyers

First time buyers purchasing a property for up to £500,000 pay no SDLT on the first £300,000 of the purchase price. Worldwide property ownership is taken into account when determining whether an individual is a first-time buyer. In addition, where the property is

being acquired jointly, all purchasers must qualify as first time buyers for the relief to be available.

Additional residential property: 3% SDLT surcharge

Worldwide ownership is taken into account when considering whether a property is an additional residential property, meaning that the 3% surcharge can apply to a first UK property purchase. A similar surcharge applies to LBTT.

The SDLT surcharge will mainly affect those buying second homes or rental properties as buy-to-let investments, but it may also have an impact on trustees. There is a specific exemption for trustees purchasing a main home on behalf of a life tenant or interest in possession beneficiary (for the purposes of these rules the beneficiary is treated as having acquired the property). This exemption does not extend to discretionary trusts, which are instead treated in the same way as companies (i.e., potentially liable to the surcharge in respect of even a first residential property purchase).

Company purchasing residential property

Where a company or other 'non-natural person' is used to acquire a property costing more than £500,000, SDLT may be payable at a 'super rate' of 15%. Exemptions from this super rate apply, including for certain properties used in a letting or property development business.

The 3% SDLT and LBTT surcharge applies (with minor exclusions) to all corporate purchases of residential property where the 15% rate does not apply.

A note on LBTT and LTT

LBTT and LTT are both, in broad terms, very similar to SDLT: the regimes are not, however, identical. This factsheet does not consider the differences, and anyone contemplating a Scottish (or, from April 2018, Welsh) property purchase should ensure that they take appropriate advice.

Occupation of the property

Individuals

Ownership and occupation of residential property by individuals is relatively straightforward.

Trustees

Ownership of residential property by trustees, UK or non-UK resident, is relatively straightforward. If the property is to be occupied rent-free by a beneficiary of a trust, the beneficiary will be in receipt of a trust benefit which could be matched to underlying income and gains in the trust structure, giving rise to a UK tax charge.

The trustees should also be aware of the potential availability of Principal Private Residence (PPR) relief and ensure that they have exercised their dispositive powers to permit the beneficiary to occupy the property.

Companies

The ATED regime applies to companies owning UK residential property which is, broadly speaking, worth more than £500,000. Where the property is occupied by an individual connected with the company, an annual flat rate tax (ATED) is due. For ATED charges applying from April 2018, the rate will be based on the property's market value at 1 April 2017 or acquisition price if later. The ATED levy currently starts at £3,500 for properties worth £500,000 to £1,000,000 and the top rate of ATED is £220,350 for properties worth £20 million or more.

Renting the property

Individual

If an individual lets UK residential property they are subject to income tax at their marginal tax rates, i.e., up to 45% on the rental profit, regardless of their UK

residence status. Deductions are available for revenue expenses, e.g., letting agents' fees. Over a four-year period from April 2017, relief for mortgage interest will be increasingly restricted so that from April 2020 only basic rate tax relief at 20% will be available.

Properties let as furnished holiday lets are subject to different rules.

Trustees

Both UK and non-UK resident trustees are subject to income tax at 45% on their rental profit. Deductions are available for revenue expenses, e.g., letting agents' fees, although a restriction on mortgage interest applies in the same way as to individuals.

Companies

A UK resident company is subject to 19% corporation tax on net rental profits.

Deductions are available for revenue expenses, and there is no specific restriction on financing costs as applies to individuals and trusts (although a general corporate interest restriction will apply if the net interest cost exceeds £2 million annually).

Under current rules, a non-UK resident company will be subject to income tax at 20% on its net rental profits.

If the shareholder/s of the non-UK resident company are UK resident individuals, or a settlor-interested trust where the settlor is UK resident, the underlying UK source income may be attributed to the shareholder/settlor so that additional tax at up to 45% is due (with a credit for the 20% tax paid by the non-UK resident company).

In general terms, companies may be an appropriate acquisition vehicle for residential properties which are to be let out commercially (where no ATED or related charges should apply).

Non-resident landlords

Non-UK resident landlords (individual, corporate and trustees) are subject to 20% withholding tax on rents received unless an application is made to HM Revenue & Customs (HMRC) under the non-resident landlord scheme for rents to be paid gross. The 20% withholding tax 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.

Ownership of UK residential property: inheritance tax

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. IHT also applies to any gifts made within seven years prior to death, although there is a tapering of the IHT rate.

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 'close company'. Under these new rules, the value of the shares attributable to the UK residential property is within the scope of IHT. Further, any loans made to purchase either UK residential property or any shares in a non-UK close company to the extent to which their value is attributable to a loan to purchase UK residential property, will also be within the scope of IHT.

Where residential properties are owned through a non-UK company post-5 April 2017, there are deeming provisions that give an ongoing IHT exposure for two years when the shares are eventually sold. This area is complex and specific advice should be sought.

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. Where the settlor of the trust retains an interest in the trust, in addition to these charges the property will remain in their estate for IHT purposes.

Disposal of property

Gains on disposal of a residential property may be subject to UK capital gains tax (CGT), corporation tax, or non-resident capital gains tax (NRCGT). Generally, gains must be reported on the relevant self-assessment tax return. NRCGT, however, has to be reported separately, within 30 days of the disposal taking place. Penalties apply where a return is filed late.

It has been announced that the 30-day filing and payment deadline (that currently applies to non-UK tax residents) for disposals of UK residential property will be extended to UK tax residents for disposals on or after 6 April 2020.

Individuals

Individuals are subject to CGT on gains realised on the disposal of residential property. Individuals selling their only or main residence should qualify for PPR relief so that the gain is not chargeable. CGT on residential property is charged at 18% or 28%, depending on whether the individual has any basic rate band remaining (after the calculation of their income for income tax purposes). PPR final period exemption is curtailed from 18 months to 9 months with effect from 6 April 2020.

Lettings relief will now only apply where an owner is in shared occupancy with a tenant from 6 April 2020.

Non-UK resident individuals are subject to NRCGT at 28% on the gain realised by reference to the April 2015 market value, or acquisition price if later.

Trustees

UK resident trustees are subject to CGT at 28% on gains realised on the disposal.

Non-UK resident trustees are subject to NRCGT at 28% on gains realised on disposal by reference to the April 2015 market value, or acquisition price if later.

Trustees may qualify for PPR relief where a beneficiary occupies a trustee-owned property under the terms of the settlement.

Company

A (resident or non-resident) company will be subject to CGT at 19% (17% from April 2020) on residential property gains realised on disposal by reference to the April 2015 market value or acquisition cost if later.

In addition, anti-avoidance legislation may attribute the gain of a non-resident company to the shareholders. This is subject to a motive defence where it can (broadly speaking) be shown that the structure was not set up to avoid CGT or corporation tax.

Capital gains tax on disposal of shares and commercial property

From April 2019, all disposals of UK property by non-residents are subject to CGT, as will disposals of indirect interests in such property (for example, the sale of shares in a 'property-rich' company. Gains on

commercial property and indirect interests in all types of property have been rebased to April 2019, so that only the element of gain accruing from that date is taxable. Tax will be due at the same rate as an equivalent disposal by a UK resident (so, for example, a non-resident company disposing of a commercial property in June 2020 will pay tax on any gain at 17%).

In summary

The choice of holding structure can have a significant impact on tax liabilities from acquisition through to ultimate disposal of UK residential property. It pays to take the time to get the position right up front.

Separate considerations apply where a residential property is held for development purposes. These are outside the scope of this factsheet.

	Resident individual	Non-UK resident individual	UK resident trust	Non-UK resident trust	UK resident company	Non-UK resident company
Purchase						
Stamp Duty Land Tax/ Land and Buildings Transaction Tax	Y	Y	Y	Y	Y	Y
3% surcharge for additional residential property	Y	Y	Y	Y	Y	Y
Higher rate (15%) on enveloped dwellings	N	N	N	N	N ⁽ⁱ⁾	N ⁽ⁱ⁾
Ownership						
Annual tax on enveloped dwellings (ATED)	N	N	N	N	N ⁽ⁱ⁾	N ⁽ⁱ⁾
Tax on profits of rental business	Y (income tax at marginal rate)	Y (income tax at marginal rate)	Y (income tax at relevant trust rate)	Y (income tax at relevant trust rate)	Y (corporation tax)	Y (income tax at 17%, corporation tax from 6 April 2020) ⁽ⁱⁱ⁾
Inheritance tax	Y	Y	Y	Y	Y	Y
Disposal						
Non-resident CGT	N	Y (28%)	N	Y (28%)	N	Y (17%)
CGT	Y	N	Y (28%)	N ⁽ⁱⁱⁱ⁾	N	N
Corporation tax on chargeable gains	N	N	N	N	Y	N

(i) Relief from ATED and related charges on enveloped properties is generally available where the property is let to a third party. Relief from ATED must be claimed annually.

(ii) Non-UK resident companies will become liable to corporation tax on rental profits from 6 April 2020 onwards, at 17%.

(iii) In some circumstances the settlor or beneficiaries may be subject to CGT.



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