
# Tax Changes Impacting Ownership of UK Residential Property -- July 2018

There has been a flurry of changes to UK tax laws that, along with additional proposed changes, significantly impact the ownership of UK residential property through off-shore structures.

The tax exposure of UK non-residents owning UK real estate depends, in part, upon how it is held. Its use remains relevant but will become less so as some exemptions for commercial or investment properties are phased out. As a result, offshore ownership structures may need to be revisited, if you have not done so already.

## Non-Doms and Inheritance Tax (IHT)

UK property owners often used offshore companies to hold property to avoid IHT (amongst other purposes). This may have been advantageous even if it meant losing the principal residence exemption under CGT on sale. Shares of offshore companies are not caught within the UK's IHT regime unless the owner is (or is deemed) domiciled in the UK. [*UK domiciles are subject to IHT on their worldwide assets*.]

In addition, transfers of shares avoided the stamp duties (SDLT) normally charged on property transfers.[1]

A 3% SDLT surcharge now applies where the buyer owns another residence, including residences outside of the UK. But the surcharge will also apply, even in the case of a first residence, where it is purchased through a company or discretionary trust.

Similarly, individuals that were resident in the UK, but treated as "non-domiciled", could avoid IHT for certain properties if the settlement of a trust had been properly completed before the individual became UK resident.

Starting in 2017, *excluded property* trusts will no longer effectively shield a residential holder of UK real estate from IHT because shares of offshore companies that own UK real estate will no longer be considered excluded property.

Additional IHT taxes might also apply on a periodic basis prior to death in certain circumstances. Mortgages on UK property could now be exposed to IHT or be unavailable to reduce IHT liabilities.

In addition, tax changes effective in 2017 shorten the time during which long-term residents will not be deemed to be domiciled for IHT purposes and will treat individuals born in the UK as domiciled as soon as they become resident in the UK, even if they had acquired a new domicile by choice in the interim.

## Recent Changes to Capital Gains Tax

UK taxes on capital gains from disposition of property previously applied to i) residents and ii) gains connected to UK real estate. This led some to hold UK real estate within offshore structures.

However, starting April 2015, non-residents (including non-resident companies) disposing of UK residential properties became subject to the non-resident CGT regime (costs rebased to April 2015).

The UK intends to apply the CGT regime to sales, occurring after April 2019, of any UK real estate held by non-resident individuals and companies, including commercial property (with perhaps some exemptions for institutional investors). By April 2020, gains on disposition of UK real estate owned by offshore companies may be taxed under the corporate tax regime, rather than under CGT.

In addition, HMRC had seen some push back from the EU on certain taxes imposed when property ownership was *exported* from the UK. Following Brexit, some of those relaxations may be repealed.

### Annual Tax on Enveloped Dwellings

ATED was introduced in late 2012 to tax offshore entities that hold UK residential property. The legislation addressed a perceived lack of fairness as to how *non-Doms* and offshore owners of expensive London properties were being treated, *vis-à-vis* UK residents.[2] Investment (or *buy to let*) properties were initially exempted from the tax.

Offshore companies holding UK residences worth more than £500,000 now pay an annual ATED charge (a sliding scale depending upon value) and will be responsible for a 28% capital gains tax on dispositions (costs were rebased as of April 5, 2013).

### Evolving Registration Requirements

Although many of the tax advantages of owning UK property through offshore structures have been eliminated, one of the remaining attractions was enhanced confidentiality.

However, in January the UK clarified rules requiring offshore entities that own UK real estate to complete a public registration. The registration, expected to be in force by early 2021, will likely require the entity to identify its ultimate beneficial owner(s). While the purpose is to address transparency and money-laundering issues, it is consistent with a policy objective to discourage using offshore companies to own UK residential properties.

Additionally, under new rules, non-resident trusts that hold UK assets (or receive UK-sourced income) will need to register. The deadline for registration depends upon the UK taxes that are payable.

As we discussed last year, investors should be aware that the *Common Reporting Standard* arrangements, by now in place in most countries, will provide tax authorities with considerably more information than they have had previously with respect to financial accounts held offshore. The first package of account information will be sent by HK authorities to the UK by October this year, for example.

**Investors that have implemented wealth planning that uses an offshore structure to hold, or make loans related to, UK real estate that were put into place some time ago should carefully review their plans with their professional advisors.** Some flexibility present prior to April 2017 will have been lost by now; but curing structures that create unnecessary exposure may still be advantageous.

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[1] SDLT on residences starts at 2% for a cost of £150,000 and increases with cost up to a maximum of 12%. There is also a 3% surcharge where the buyer already owns other properties. Where an entity is the buyer, a 15% supercharge may be chargeable.
[2] UK had started to expand its reach to offshore companies being used to mitigate CGT and IHT in 2008 through a new *section 13 charge*, attributing what would normally have been offshore capital gains to shareholders of closely held companies on a proportionate basis. The EU somewhat dialed back the application of this charge on freedom of mobility grounds, in 2013, prompting further legislation from the UK.

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**Contact Us:**

**ChapmanCraig Limited**
2507 Tower Two, Lippo Center, 89 Queensway Road, Hong Kong
www.ChapmanCraig.com T: 852 2521 7218 E: Info@ChapmanCraig.com