



HM Revenue
& Customs

**Taxing gains made by non-residents
on UK immovable property -
Application of the anti-forestalling rule**

Technical Note
22 November 2017

This Technical Note should be read alongside the Consultation Document entitled ‘Taxing gains made by non-residents on UK immovable property’

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Introduction

This HMRC Technical Note supplements the Consultation Document '**Taxing gains made by non-residents on UK immovable property**', which was published alongside it on 22 November 2017.

The focus of this Technical Note is to ensure taxpayers are aware of the application of the anti-forestalling rule that will apply from publication of the Consultation Document.

This Technical Note and the Consultation Document should be read alongside one another, to ensure the full context of the changes are clear.

Any questions or feedback about the policy or Technical Note should be fed into the consultation process using the contact details listed in the Consultation Document.

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Chapter 1 Scope of the new charge

Overview of changes

1. The government announced at Autumn Budget 2017 that from April 2019 tax will be charged on gains made by non-residents on the disposal of all types of UK immovable property, extending existing rules that apply only to residential property.
2. In accordance with the provisions in sections 1, 14D, and 14F of the Taxation of Chargeable Gains Act 1992 (TCGA), Capital Gains Tax currently applies to ‘NRCGT gains’¹ accruing on disposals of UK residential property interests by non-resident individuals, trustees, and personal representatives, and by certain closely-held companies. A close company is one where five or fewer of the participators control the company, or participators who are directors control the company.
3. This measure expands the scope of the UK’s tax base with regard to disposals of immovable property by non-residents in two key ways:
 - 3.1. All non-resident persons’ gains on disposals of interests in UK land will be chargeable
 - 3.2. Indirect disposals of UK land will be chargeable
4. Overall, the aim of the policy is that, subject to transitional arrangements as explained in the Consultation Document, any gain made by a non-resident on disposal of UK immovable property will be chargeable to UK tax, and that as far as possible the rules will mirror the existing chargeable gains rules for UK residents.
5. The new rules will apply to gains on disposals occurring on or after 1 April 2019 (for companies) or 6 April 2019 (for other persons).

Direct disposals

6. Direct disposals of UK immovable property will be treated as far as possible as under existing rules. There is more detail on direct disposals in Chapter 3 of the Consultation Document, but see also Chapter 5 with respect to widely-held companies.

Indirect disposals

7. Indirect disposals are explored in detail in Chapter 4 of the Consultation Document.
8. The indirect charge will apply in situations where a non-resident:
 - 8.1. Disposes of an interest in a “property rich” entity (“the envelope”)
 - 8.2. At the date of disposal, or at any point in the five years prior to that date, the non-resident holds, or has held, a 25% or greater interest in the envelope
9. “Property rich” will be defined as where an envelope derives 75% or more of its gross asset value from UK immovable property (residential or non-residential). Gross asset

¹ TCGA 1992, Schedule 4ZZB

value means the market value of the envelope's assets at the time of disposal, not taking into account liabilities such as loan finance.

10. The concept of property that derives its value from land already appears in the UK Taxes Acts, and the new rules will be modelled on section 356OR of Corporation Tax Act 2010 (CTA10), where it is defined as including any:
 - 10.1. shareholding in a company deriving its value directly or indirectly from land
 - 10.2. partnership interest deriving its value directly or indirectly from land
 - 10.3. interest in settled property deriving its value directly or indirectly from land
 - 10.4. option, consent or embargo affecting the disposition of land
11. The rules will also charge disposals of an envelope that would not meet the property richness test looking only at its directly owned assets, but that meets the test by reference to indirect interests in gross assets held by any other body in which it has a stake.
12. The value tracing rules will be modelled on section 356OM of CTA10.
13. The 25% ownership test will look at the proportion of interest a non-resident has in a property rich envelope at the point of disposal. The test will also be met, if looking back within a period of five years prior to the date of disposal, the 25% threshold was met at any point in that period.
14. Although the new charge will apply only to gains arising on disposals after commencement, this test will take into account ownership before that time to determine if the 25% test is met within the five year period prior to the disposal.
15. In addition to looking at the non-resident's own interests in a property rich envelope, the rules will also consider the interests of:
 - 15.1. connected parties within the meaning in section 1122 of CTA10, supplemented by
 - 15.2. those who are related to the non-resident under the 'acting together' rules, modelled on those in the corporate interest restriction rules at section 465(3) of the Taxation (International and Other Provisions) Act 2010 (TIOPA10) to include situations where persons come together as a group with a common object in relation to the envelope entity
16. This test will therefore be met if at any point in the five years up to and including the date of disposal the non-resident, alone or with related parties, has held a 25% or greater interest in the property rich entity being disposed of.

Chapter 2 Anti-forestalling rule

17. An anti-forestalling rule will apply from publication of this Technical Note and the Consultation Document on 22 November 2017.
18. As explained in Chapter 4 of the Consultation Document, there are situations where the UK does not have taxing rights over an indirect disposal due to the allocation of taxing rights made under a particular Tax Treaty.
19. The rule will apply to arrangements, entered into on or after 22 November 2017 where:
 - 19.1. the main purpose, or one of the main purposes, is to obtain a UK tax advantage for any person
 - 19.2. the tax advantage is in relation to tax to which that person would (apart from the arrangements) have become liable as a result of the charge to tax on gains accruing to non-residents that will come into force on 1 April 2019 (for companies) and 6 April 2019 (otherwise)
 - 19.3. that advantage arises by reason of any provisions of double taxation arrangements, but only in a case where the tax advantage is contrary to the object and purpose of those provisions
20. Where these conditions are met, the tax advantage would be counteracted by an adjustment made by either an officer of HMRC or by the person affected (by means of assessment, variation of assessment, disallowance of a claim, etc.).
21. A UK tax advantage takes its normal meaning, and reflects a relief, reduction, etc., of the tax they would have paid absent the arrangement (see for example section 1139 of CTA10).
22. A double taxation arrangement is an arrangement made under section 2(1) of TIOPA10.
23. The targeted arrangements will involve the abuse of double taxation arrangements to put the disposal out of charge.