



# UK Residential Property - Capital Gains Tax for non-UK residents

The capital gains tax charge on disposals of UK residential property by non-UK residents (NRCGT) from 6 April 2015 will proceed. The Finance Bill legislation published on 24 March includes significant additional detail on the operation of the new tax charge, together with consequential changes to other capital gains tax (CGT) provisions.

## What's the issue?

Finance Bill (No. 2) Bill 2015 includes the legislation to introduce the previously announced NRCGT charge on non-UK resident owners of UK residential property from 6 April 2015. The charge will apply to non-UK resident owners of UK residential property interests (as defined in the legislation) unless specific exemptions apply.

## What will be taxable?

Capital gains accruing post 6 April 2015 on disposals of residential property interests located in the UK.

A UK residential property interest is, broadly, defined as any interest in UK land that consists of or is used as a dwelling. The extended charge does not therefore extend to commercial property in the UK. More detail on the definition of a UK residential property interest is set out below.

Property of any value is within these new rules.

## Who is affected?

The following table sets out the categories of non-UK resident owner who will be affected by the new charge. The table also details the rate(s) of tax that will apply to gains and other relevant information that may affect the tax liability arising.

Identity of seller	Tax rate	Other matters
Non-UK resident individual (and personal representatives of the deceased)	18% or 28%	<ul style="list-style-type: none"> <li>Tax rate depends on level of other UK source income/chargeable gains in the tax year of disposal</li> <li>CGT annual exempt amount available (£11,100 for 2015/16)</li> <li>Losses are only available to be offset against gains on disposals of UK residential property in same or subsequent tax years (special rules for year of death)</li> <li>Could be eligible for Principle Private Residence Relief (PPR)</li> </ul>



Non-UK resident trustees	28%	<ul style="list-style-type: none"> <li>• CGT annual exempt amount available (up to £5,550 for 2015/16)</li> <li>• Losses – same as for individuals (see above)</li> <li>• Takes priority over existing anti-avoidance legislation that taxes trustee capital gains on UK resident settlors/beneficiaries</li> <li>• Could be eligible for PPR</li> </ul>
Non-UK resident company	20% (or 28% if ATED applies)	<ul style="list-style-type: none"> <li>• Tax rate is 20% (but if already within the scope of ATED CGT regime rate will be 28% - see interaction with ATED regime below)</li> <li>• No exemption from the CGT charge if the company is a property investor/developer, but see below for specific exemptions that can be claimed by certain companies and institutions</li> <li>• Indexation allowance will be available</li> <li>• A form of group relief will be available to allow intra-group transfers and losses to be utilised against gains on disposals of UK residential property in the same group</li> </ul>
Non-UK residents owning residential property through a partnership	Depends on identity of the partner – individual, trust, or company - rates apply as above	<ul style="list-style-type: none"> <li>• For non-UK resident entities that are classified as partnerships when taking into account the application of the law in the local jurisdiction that are treated as transparent for UK tax purposes, the individual partners will be chargeable to CGT accordingly</li> <li>• Non-transparent non-UK partnerships are taxed in the same way as companies</li> </ul>

### Exemptions relating to certain corporate and institutional owners

The government has indicated that it does not wish to put barriers in the way of genuine institutional investment in UK residential property. Therefore it has included some specific exemptions from the charge relating to certain non-resident owners of UK residential property interests:

- Specific classes of qualifying institutional investors will be exempt provided they meet “genuine diversity of ownership” tests
- All other non-UK resident companies and funds will be subject to a “narrowly controlled” test (similar to existing close company tests) to determine whether they can potentially fall outside the scope



The exemptions, if applicable, must be claimed; they do not apply automatically.

The aim of the exemptions is to ensure that the new charge applies only to private and family ownership structures, while at the same time limiting avoidance opportunities through the use of funds as ownership vehicles.

Further detail on corporate and institutional owners, including widely held companies and funds and the pooling rules for non-resident companies which are part of a group, are not covered in this overview.

### Definition of UK residential property interest

A UK residential property interest is any UK land or interest in UK land that has consisted of or included a dwelling at any time in the period of ownership since 6 April 2015. It also includes land bought on "off plan" purchases that are intended to be used as a dwelling. An interest in land for these purposes does not include a charge over or a licence to occupy land.

A dwelling is any property used or suitable for use as a dwelling, or in the process of being constructed or adapted for this use. Land used as grounds and gardens occupied or enjoyed with a dwelling is taken to be part of the dwelling.

There are some specific exemptions from the definition of a dwelling, including most types of communal property including school buildings, hospitals, prisons, residential homes and hotels. Also exempt will be "purpose-built" student accommodation with at least 15 bedrooms which is occupied by students on at least 165 days in a tax year.

Periods for which a building is temporarily unsuitable for use as a dwelling are treated as periods of use as a dwelling, unless specific conditions are met in respect of accidental damage or complete demolition.

### Calculating the chargeable gain

#### *How will the rebasing work?*

The default position will be to 'rebase' the property to its market value at 6 April 2015 so that only the gain realised over that value is subject to NRCGT.

Should the owner not wish to rebase they will have the option to 'time apportion' the whole gain over the period of ownership so that only the apportioned gain treated as arising since 6 April 2015 is subject to the charge.

Owners will also have the option to neither rebase nor time apportion the gain, and instead to compute the gain (or loss) over the whole period of ownership.

### Losses

Losses made by non-residents on disposals of UK residential property interests will only be available to set against NRCGT gains of the same and later years (or, where an individual has died, against NRCGT gains of the three years preceding death). However, where the non-resident person becomes UK resident any unused NRCGT losses will become available as general capital losses. Where a UK resident becomes non-resident, any unused UK residential property losses will be available to set against future NRCGT gains.



### Interaction with anti-avoidance rules

Where a gain is subject to tax under these new rules, it will not be subject to tax again under existing anti-avoidance rules that can attribute gains of a non-UK resident trust to UK resident settlors/beneficiaries; or gains of a non-UK resident company to UK resident participators. However, for properties purchased before 6 April 2015 by non-UK resident trustees/companies, the pre-April 2015 element of any capital gain can still be taxed under existing anti-avoidance rules.

The ATED/high value property CGT rules were introduced from 6 April 2013 to combat perceived tax avoidance involving the use of “non-natural persons” to hold UK properties. These rules will remain in force and could in principle apply to a UK property disposal in addition to the new extended charge. Any gain that is potentially subject to both charges will be liable to the existing ATED/high value property CGT rules in priority. If a gain arising since 6 April 2015 is not fully chargeable to ATED, any balance of the gain will be charged under the new rules.

### Timing

The new measures will take effect from 6 April 2015. It is considered unlikely that any change of Government at the General Election will affect the introduction of this measure.

### Interaction with other provisions

The new rules also need to be considered in conjunction with the new rules for Principal Private Residence relief (PPR) applying to non-UK resident owners of UK residential property

The interaction with the ATED/high value property charges does add to the complexity of the new rules.

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