

UK Finance Bill 2019 published – UK commercial property tax regime for non-resident investors to change, but some relief for trading businesses

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On 6 July 2018 the UK Finance Bill 2019 was published by the UK Government. The draft Finance Bill contains the details of the new regime on taxation of non-UK resident investors in UK real estate that had been proposed in a consultation by HMRC following the November 2017 Budget (see Proskauer Tax Talks blog entry of 22 November, [here](#)). The rules will come into force on 6 April 2019 and, for the first time, the charge to UK capital gains tax will be extended to include gains made by non-UK investors in UK commercial property and in certain “property-rich” vehicles.

In general, the structure of the new regime will be as proposed in the November consultation with a few amendments. One of the key changes from the consultation is the inclusion in the draft legislation of an exception from the scope of the new charge for trading entities (described in more detail below).

Alongside direct disposals of UK land, disposals of “property-rich” assets will be caught by the new legislation (such as shares in a company) that derive at least 75% of their value from UK land. Where a number of companies or other entities are disposed of in a single arrangement, the assets of all of the entities will be aggregated in order to establish whether this 75% test is satisfied. Indirect disposals will be within the charge to tax where the investor holds at the date of the disposal, or has held within two years prior to disposal, a 25% or more interest in a property-rich asset (either directly or through a series of entities). This test has been relaxed from the consultation, as the draft Finance Bill reduces the look-back period from five years to two, and includes an additional exception allowing an investor to disregard a holding of 25% or more during the two years prior to a disposal if the holding was only greater than 25% for an insignificant proportion of the total length of the holding period.

Under the revised proposals in the Finance Bill, an offshore investor will be exempt from UK tax on any gain on disposal of a property-rich company if the investor can reasonably conclude that the underlying UK land is, to all but an insignificant extent, used in the course of a trade carried on by the company or a person connected to the company. The trade must have been ongoing for 12 months prior to the disposal, and must be expected to continue. How this exemption will be applied in practice remains to be seen, but this could be an important development for investors in companies carrying on UK businesses such as hotels and some retail businesses.

The rebasing rules as proposed in the consultation have also been relaxed in the draft Finance Bill:

- Investors will now be able to rebase their holding in indirect assets to April 2019 market value – this is something that had been lobbied for by the industry and is a helpful change. Previously rebasing was only going to be possible for direct disposals of UK property.
- Non-UK resident companies which become UK resident after April 2019 will also now be able to elect to rebase to the April 2019 value.

Disappointingly, the application of the new law to collective investment vehicles, in particular real estate funds, will be the subject of further consultation by HMRC.

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