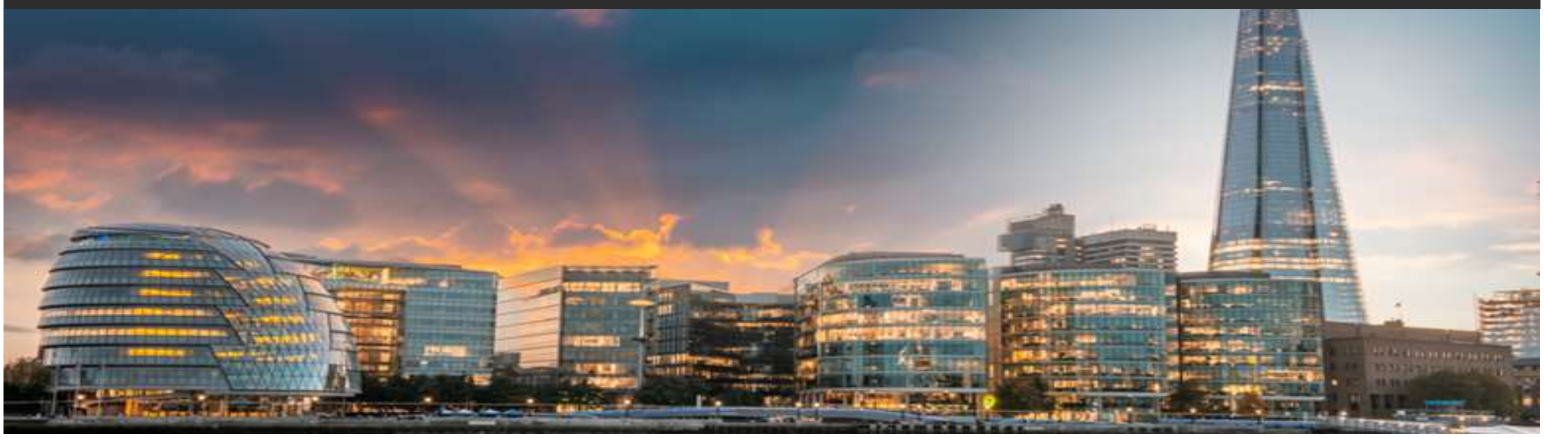
Alert | Real Estate Tax



November 2017

Major UK Real Estate Tax Changes for Overseas Investors Announced

On Nov. 22, UK Chancellor Phillip Hammond announced dramatic changes to the UK real estate market in the 2017 Budget. The Government has announced an intention to extend the scope of UK tax so that disposals of all UK commercial and residential property by non-resident companies, JPUTs, individuals, and other persons are subject to UK tax with effect from April 2019. In addition, the Budget proposes to extend the UK tax net to profits derived by non-residents on disposals of companies, JPUTs and other vehicles, including REITs and funds, which derive over 75 percent of their gross value from UK property. Companies will be subject to corporation tax and other non-residents will be subject to capital gains tax.

Unlike most jurisdictions, to date, capital gains realised by non-UK residents from direct sales of UK real estate held as an investment, and of companies, JPUTs and other vehicles holding such real estate, have not been subject to UK tax, save in limited circumstances.

According to the Budget, asset values will be rebased in April 2019, so that only gains realised after that date will be subject to tax on disposals under the new rules.

A limited number of non-resident investors, such as pension funds and sovereign wealth funds, will be exempt from the tax on their disposals. There will not be an exemption for widely held non-resident companies.

There will be an exemption for any non-resident which (together with related parties) have held less than a 25 percent interest in the vehicle throughout the five years prior to the disposal. The definition of related parties will be crucial. For example, whether investors in a partnership or those that have entered into an arms-length joint venture agreement are treated as related for the purposes determining whether they qualify for exemption from the new tax charge on the basis that they hold less than 25 percent in the offshore vehicle remains to be seen. However, the consultation document suggests that it may be likely that these will be treated as related, unless lobbyers persuade the government that this should not be the case.

Anti-avoidance rules will be introduced, including provisions which have effect from 22 November 2017, seeking to prevent non-residents structuring or restructuring to make use of vehicles in jurisdictions which afford treaty protection against the new rules on indirect disposals of UK property.

In addition to the above proposals, the Government confirmed that it will bring non-UK resident companies within the charge to corporation tax (rather than income tax) in respect of UK property rental income, with the associated limitations on tax deductions for interest and loss relief. However, this will not occur until April 2020, rather than April 2018 as previously anticipated.

Another relevant change is that the Government is freezing indexation allowance for companies as of 31 December 2017. Consequently, any disposal of assets by a company made after that date will only benefit from indexation allowance, which uplifts the base cost of property and other capital assets by reference to inflation for the purposes of calculating taxable gains, for inflation up to the end of December 2017.

This is a somewhat surprising move by the UK Government to introduce a significant new tax on investment in the UK which takes effect three days after the date of Brexit.

Greenberg Traurig will continue to monitor ongoing developments.

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