

THE GOVERNMENT IS READY FOR A TURF WAR

The tightening of tax legislation continues, with non-UK-resident owners of land feeling the pinch, say *Ziva Robertson* and *Simon Gibb* of McDermott Will & Emery

IN JULY THE GOVERNMENT announced its intention to level the playing field for UK tax residents and non-residents and extend capital gains tax (CGT) to all UK land from April 2019.

Historically, companies, trusts and individuals who are not UK tax-resident were not subject to CGT when they sold or otherwise disposed of land in the UK. In 2013 this began to change. Companies which owned valuable UK residential property were subjected to a special CGT charge on that land, known as ATED (annual tax on enveloped dwellings). Originally only applicable to land worth £2 million and over, this has subsequently been reduced to £500,000.

In 2015 this concept was extended to all non-residents, including individuals who directly owned residential property in the UK. Indeed, in April 2017 inheritance tax was extended to tax the value of UK residential property which is held in offshore companies and trusts. The government has now announced its intention to take what, in retrospect, now seems to be the logical conclusion of this creeping taxation of UK land: to subject almost all interests in UK land (whether residential or not) to CGT.

Although aspects of the proposal remain to be finalised and are the subject of ongoing public consultation, from April 2019 we anticipate that non-residents (including offshore trustees and non-UK resident companies) who sell, gift or otherwise dispose of UK land will be subject to CGT. The government has published draft legislation indicating the likely framework of the legislation, the main points of which are:

- The chargeable gains will only be those from April 2019, so historical gains will fall outside the charge but valuations will be required.
- The charge will apply not just to directly held land, it will be levied on the disposal of certain interests in land-rich companies.
- No SDLT (stamp duty land tax) relief will be available for restructuring the holdings onshore.
- This new tax charge will result in the repeal of the ATED-related gains charge.



The extension of the new CGT charge to indirectly held interests shadows the inheritance tax change. Whether or not a company will be within this charge will depend on whether 75 per cent or more of the company's gross value is derived from UK land. Further anti-avoidance rules are expected to ensure that where multiple entities are disposed of in a single deal, this valuation exercise will be done for all their total assets. Where a company passes this test and is land-rich, a person's disposal of their interest in it will be subject to CGT if, broadly, the interest is 25 per cent or more (calculated as including the interests held by certain connected persons, mainly close family).

To end on a gloomy note, given the inheritance tax charge relies on the CGT definition of UK land, one can only presume that part of the ongoing review of inheritance tax will consider it appropriate to 'level the playing field' and extend that tax charge to all offshore companies and trusts deriving their value from UK land of any description.

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