

### Offshore owners of UK property may be subject to UK tax

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Legislation has been introduced, effective from yesterday, to bring within the scope of UK taxation profits or gains from the disposal of UK land or buildings made by those based offshore. It is aimed primarily at developers and speculators. Historically some offshore developers have been able to avoid UK taxation on UK property developments by relying on tax planning involving offshore jurisdictions and ensuring that no taxable UK presence was created.

**Overview of the new rules:** the new rules announced yesterday introduce very broad measures designed to bring profits derived from the development of or dealing in UK land into the UK tax net. In addition specific anti-avoidance legislation is going to prevent double tax treaties providing protection where the main purpose, or one of the main purposes, of offshore arrangements is to obtain a UK tax advantage. Of note is that it appears that these anti-avoidance measures will not just target property deals, but are drawn much more widely.

**Territorial restriction removed:** the key change will be to remove the current territorial restriction in UK legislation so that the profits of a trade carried on by a company are subject to corporation tax on income where the trade comprises dealing in UK land, or developing UK land with a view to disposing of it, regardless of the residence of the company carrying on the trade, regardless of where the trade is carried on and regardless of whether or not the trade is carried on through a PE (whether in the United Kingdom or elsewhere).

**Non-resident companies:** non-resident companies will be taxed, regardless of whether there is a UK PE, on trading profits from UK property:

- dealing in any estate, interest or right in or over land in the UK; or
- developing any land in the UK with a view to disposing of any estate, interest or right in or over the land. This will include redevelopment.

The new charge will apply only to that part of the company's trade or trades that comprises trading in UK land. Foreign PE exemption will not be available. If the company's only activity is a UK property trade then the taxable profits will be the full trading profits of the company regardless of the residence of the company.

**Anti-avoidance:** the government is targeting sophisticated schemes in which arrangements are entered into, the main or one of the main purposes of which is to secure that profits are not subject to the new charge. Anti-fragmentation (targeting scenarios where, typically, a number of connected persons act together to carry out development activity that amounts in substance to a single trade of UK property development) and anti-enveloping rules (targeting disguised trading in land) will ensure that such arrangements will be counteracted without consideration of whether there is a tax avoidance purpose.

**Withholding tax:** the government will consider the introduction of a withholding tax if it proves necessary to ensure full compliance with the new rules.

**UK developers:** the rules will have no impact on wholly UK developers all of whose profits are already charged to CT, or IT, on income.

Whilst these announcements were anticipated, we now have the detail which will be digested by the industry and tax professionals over the coming days. To the extent they have not already done so, owners based offshore involved in UK property should review their operating structures as a matter of urgency.

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