STEPHENSON HARWOOD

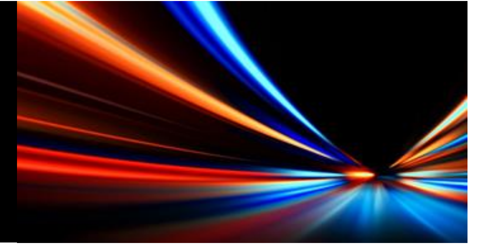
7TH FEBRUARY 2018

New moves for NRCGT

Extending the regime from April 2019

A short history lesson…

The current tax position for non-residents

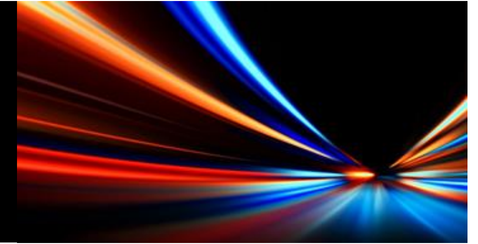


- ATED (from April 2013)
- ATED-related CGT
- NRCGT (from April 2015)
- SDLT slab to slice (from March 2016)
- IHT protection lost (from April 2017)

- Where one foot treads the next is sure to follow…

What’s next?

Extending the regime

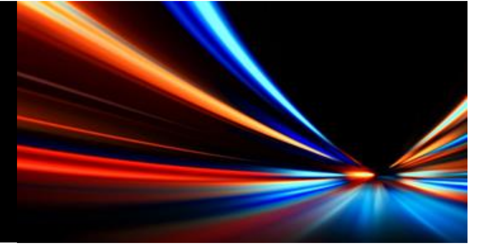


- Consultation opened on 22 November 2017

- Who?
  - All non-residents including individuals, companies, trusts etc
- What?
  - An NRCGT regime that catches all UK-situs property
    - Commercial and residential property
    - A “cohesive framework” for all property gains
- When?
  - April 2019

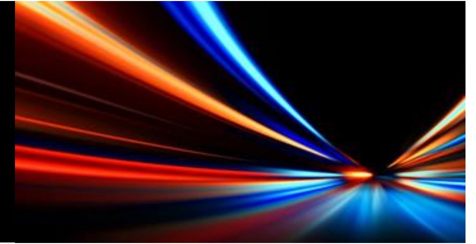
Digging deeper

What's changing for residential?



- No longer just close companies; widely held companies will be within the scope
- Indirect disposals will be caught too
- Exemption from NRCGT for life assurance companies on gains on interests held within portfolio of investments will disappear
- Close companies will be taxed to CT from April 2019

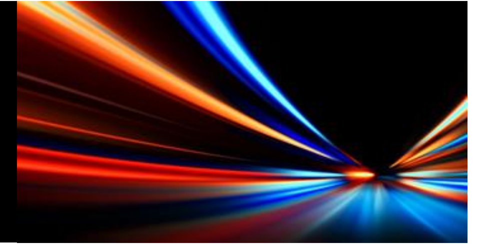
Laying the foundations
A fresh start for commercial



- Rebasing
  - From 1 April 2019 for companies
  - From 6 April 2019 for other persons
- Same rebasing point for:
  - widely-held companies holding residential property
  - All indirect disposals of residential property by all persons
- Disapplying rebasing
  - Option to use base cost to compute (not for indirect disposals)
  - No proportionate gain reduction (unlike residential)

Avoiding the traps

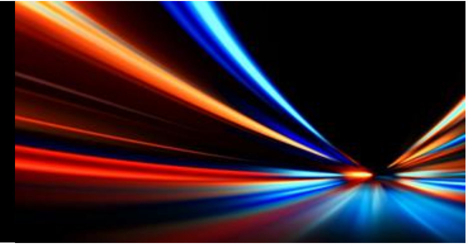
Points to note



- Rebasing checkpoints
  - Mixed use
  - Changes in use
- Indexation
- Property income for non-resident companies

Losses

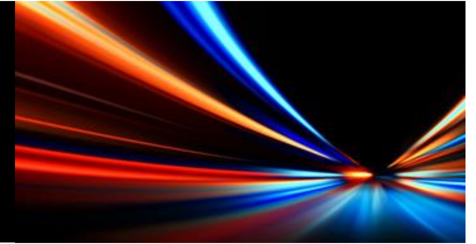
Making the most of the offset



- Losses
  - Companies - losses available to offset against other gains for computing CT. Not restricted to gains on UK property
  - Individuals/trusts etc – follow existing NRCGT regime BUT no distinction between gains on commercial and gains on residential
- Roll-over relief available

Tax on gains

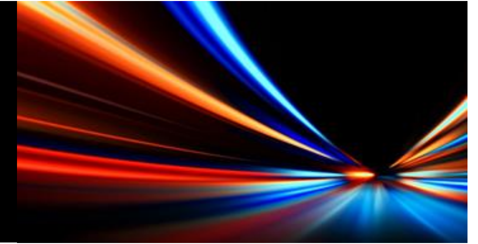
Rates and reliefs



- Corporation tax for corporates
  - 19% rate
- CGT for individuals and trusts
  - 18 - 28% (including personal allowances)
- Exempt entities remain outside scope (e.g. non-UK pension schemes)
- What's going to happen to ATED-related CGT? It's a muddle…

Anti-avoidance

Don't get caught out!

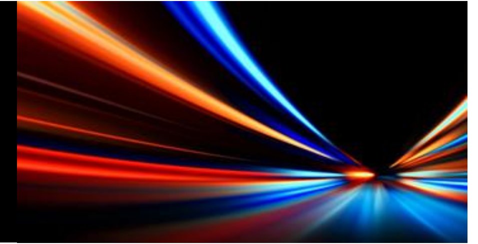


- Anti-forestalling measures in effect already (since 22 November 2017)

- TAAR to be introduced from April 2019
  - All arrangements where the main or one of the main purposes of which is to secure that gains fall outside the new regime

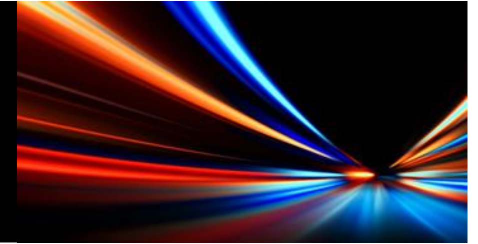
Multi-storey tax

How the new regime works



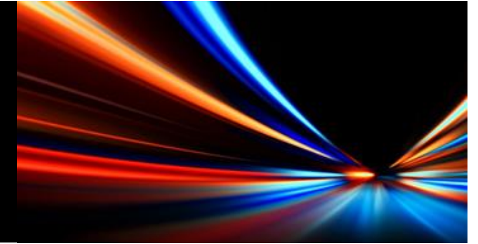
- Two levels of tax
- Direct disposals i.e. getting rid of the property
  - Computed as above
- Indirect disposals i.e. getting rid of the company holding the property
  - Computed as follows

Indirectly yours



- Disposal of interest in entity holding the property
- Conditions
  - Is the entity "property rich"?
    - 75% test
    - Gross asset value at disposal
  - How large is the non-resident's holding?
    - 25% test
    - At date of disposal or preceding five years (including before April 2019)
    - Count related parties

"Property rich"
Part 1: the test

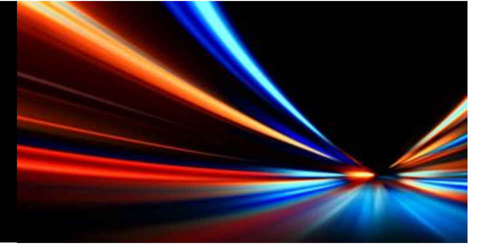


- Look at all UK land both residential and commercial
- "property deriving its value from land":
  - Shareholding in company
  - Partnership interest
  - Interest in settled property

  Deriving its value directly or indirectly from land
  - Option, consent or embargo affecting the disposition of land
- Gross asset value of entity using MV at date of disposal
- Corporate structures – test "property richness" of entities beneath taken together

"Property rich"

Part 2: Mr Super



Bank debt £9m

Guernsey

Guernsey

Guernsey

£12m

£1.5m

£6m

Bank debt £9m

Guernsey

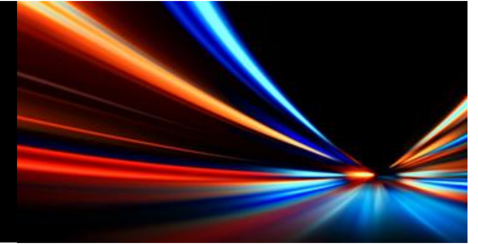
Guernsey

Guernsey

£12m

£3m

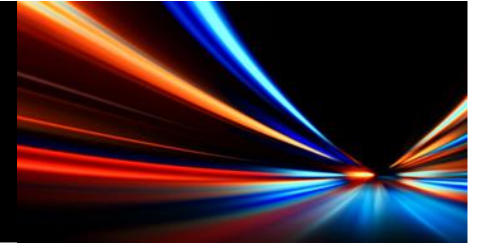
Indirect gains or losses



- Calculate in normal way for interest being disposed of
- Usual anti-avoidance rules for interest apply
- Can be PR at start or become PR later – test at disposal

Collective Investment Vehicles

REITs, JPUTs and the like



- Non-UK resident investors through UK CIVs brought within the scope
- REITs
  - Fund exempt on direct disposals (existing REIT rules)
  - Indirect disposals
    - REIT satisfying property richness test would be within charge for person holding 25% interest on disposal of interest (but unlikely)
    - Non-resident members will suffer withholding tax at 20% on property income distributions from the REIT
- Overseas CIVs
  - Intention that these also fall within scope if hold UK commercial property

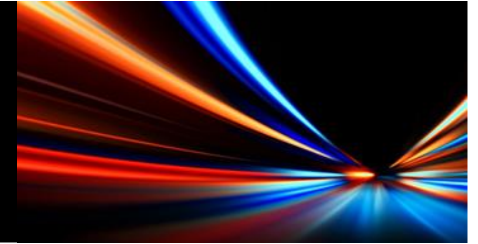
Reporting requirements

And a nasty new proposal

- Returning and reporting within usual CGT or CT framework as applicable
- No reporting of indirect disposals that don't meet criteria
- PROPOSAL: Reporting requirements on third-party advisors where non-resident makes a disposal
  - UK-based advisor receiving fees for advice or services relating to transaction within new rules
  - Advisor has reason to believe "in a business capacity" that contract for disposal of UK property has been concluded
  - Advisor cannot reasonably satisfy him/herself that transaction has been reported to HMRC
  - 60-day time limit to report

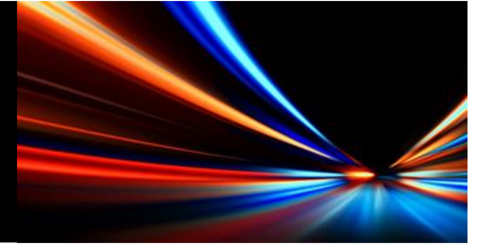
DON'T PANIC

Is all hope lost for non-UK structuring?



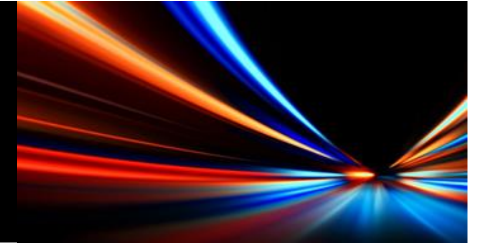
- Why might clients still want to use a non-UK structure for UK property?
  - Professional directors
  - IHT
  - PSC

What can you do?



- Reply to the consultation
  - 16th February 2018

You have been watching...



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