

# Major changes to the taxation of UK residential property

United Kingdom: April 2017

## In Brief

- Major changes impacting owners of UK residential property came into effect on 6 April 2017.
- Ownership of a UK residential property (directly or indirectly) is now likely to bring an individual owning that property within the scope of UK inheritance tax.
- The provision of loans to fund the acquisition, enhancement or maintenance of UK residential property is likely to bring the lender within the scope of UK inheritance tax.

The Finance Bill published on 20 March 2017 included the latest iteration of the draft legislation setting out the post-April 2017 position for non-UK domiciled owners of UK residential property.

Broadly, from April this year, ownership (whether direct or indirect) of a UK residential property is likely to bring an individual owning that property within the scope of UK inheritance tax (IHT), irrespective of where that individual is considered to be tax-resident or domiciled.

The changes also apply to UK residential property owned via non-UK trust structures.

Closely held offshore structures holding UK residential property will be brought within the charge to UK IHT. Loans provided by individuals, trusts, closely held companies or partnerships for the acquisition, maintenance or enhancement of UK residential property will also be brought within the charge to IHT in the hands of the lender.

### ***IHT for individuals and trustees***

*IHT is charged on the death of an individual at 40%. It also applies in respect of certain lifetime gifts at a rate of 20%.*

*For trustees, IHT is charged on every ten year anniversary of the trust's creation at a rate of up to 6%. IHT may also be charged where capital distributions are made by the trustees.*

*Where a settlor can benefit from property in a trust, both the 40% charge on death and the 10 year / exit charges can apply.*

The legislation sets out that the following will no longer be 'excluded property' for IHT purposes (i.e. they will be specifically within the charge to UK IHT):

1. A right or interest of more than 5% in a non-UK closely held company or partnership, the value of which is directly or indirectly attributable to UK residential property. A right or interest for these purposes could also derive from a shareholding or a loan creditor relationship.
2. Loans made to acquire, maintain or enhance a UK residential property. This means that loans which would otherwise be considered to be non-UK situs assets could be brought within the charge to UK IHT for the lender.
3. Funds held or otherwise made available as security, collateral or guarantee in relation to a loan for the acquisition, maintenance or enhancement of a UK residential property. The amount within the charge to IHT is capped at the value of the relevant loan.
4. Funds realised on the sale of the UK residential property that are held offshore can immediately become excluded property and would then no longer be within the charge to IHT.

Funds realised as the result of the disposal of an interest in a close company or partnership that owns UK residential property will, however, remain within the charge to IHT for the next 2 years, creating a 'tail', following the realisation. The proceeds received on the repayment of some loans (in connection with UK residential property) are also within this 2 year rule.

*For example, where a loan has been made by a non-UK resident trust to a non-UK resident individual to enable the individual to purchase UK property, the trustees will be subject to UK IHT in relation to the value of the loan.*

*The individual will also be subject to UK IHT in relation to the net value of their interest in the UK residential property.*

Targeted anti-avoidance measures have been put in place in relation to the above to counteract any structuring or restructuring that is considered contrary to the intentions of this legislation.

Where current double taxation agreements would give taxing rights in relation to non-UK situs assets to the country of a person's domicile rather than residence, the draft legislation indicates that this will only be effective if IHT will actually be applied in the country of domicile. If tax is not applied, or applied but at a rate of 0%, then UK IHT will still apply, as set out above.

## ***Our view***

We can work with affected clients to assess the wider implications of the new measures for their existing position, and the merits or otherwise of making changes.

We can also advise clients on the tax and legal implications of any changes they may wish to make and assist in implementing the changes.

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