

# UK Residential Property Investment

## A Short Guide of Tax Services For Non UK Resident Investors



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Please note that this leaflet is based upon UK tax law and published guidance in force as at March 2020. However, information provided is not necessarily comprehensive and does not purport to give professional advice.

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# Property Investment in the United Kingdom.

Residential property in the UK has been popular for overseas buyers for many years, both for their own family use and as an investment.

## The Importance of Tax

The British tax authority is called H.M. Revenue & Customs (HMRC) and it takes a close interest in the affairs of overseas property buyers.

Unless care is taken, investors can make costly errors due to the complex rules for Income Tax, Capital Gains Tax, Stamp Duty Land Tax (SDLT) (England & Northern Ireland), Land Buildings Transaction Tax (LBTT) (Scotland), Land Transaction Tax (LTT) (Wales), Corporation Tax and Inheritance Tax.

Failure to plan effectively can result in the buyer paying unnecessary tax, however with the right advice and a little attention to detail, the burden of tax can usually be reduced to a minimum, or eliminated altogether.

## Liability to Taxation

Non-UK residents are sometimes:

- partially exempt from Capital Gains Tax in the UK;
- able to claim personal tax allowances (*if a UK Citizen, or nationals of certain countries*), and
- able to enjoy Income Tax rates of 20% dependent upon how the property is purchased and the level of rental income.

The matter of an individual's liability to tax in the UK is determined by whether they are UK tax resident or have a UK untaxed source of income. It is possible to lose these exemptions if your activities in the UK are extensive or regular, and therefore **it is important to receive correct professional advice** concerning real property, other UK investments and your UK tax residence status. By taking professional advice, you will enhance the possibility of reducing your overall tax liability by claiming the correct property expenses and reliefs that may be due to you or through any company you own which holds UK property.

Regardless of the tax status of the individual landlord, Income Tax is charged on all UK property rental income. However, tax is only due on the net income, after deducting allowable property expenses which in most cases will include some or all interest paid on "qualifying" mortgage/loan albeit based on a 20% tax credit basis for individuals and trusts from 6<sup>th</sup> April 2020.

In a non UK registered company, which is centrally managed and controlled outside the UK, the rental profits for the letting of UK property will be subject to an income tax charge at 20%. From 6<sup>th</sup> April 2020 the rate of tax will be reduced from 20% to 19% as a result of the source of income being assessed as corporation tax instead of income tax<sup>1</sup>.

Tax relief on loan interest for individuals may be limited and HMRC will only grant relief where the loan has been raised from independent third parties, such as banks, on commercial terms. As

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<sup>1</sup> The final detail concerning the transition to corporation tax has been released. This can be found [here](https://www.gov.uk/guidance/paying-corporation-tax-if-youre-a-non-resident-company-landlord) or <https://www.gov.uk/guidance/paying-corporation-tax-if-youre-a-non-resident-company-landlord>. This was published in January 2020 but will be updated. This guidance deals with the switch from income tax to corporation tax which will take place from April 2020. It is important for owners of any offshore company to get professional UK tax advice when looking to transition to Corporation Tax as there are a number of factors that need to be addressed.

such, if claims are not made properly, restrictions may apply if the claim is not wholly and exclusively for the purpose of purchasing the property.

## Income Tax<sup>2</sup>

A tenant or letting agent of a UK property paying rent to an individual who is a non-UK resident landlord is required to deduct 20% tax from **gross** rents in the case of a tenant and 20% tax from **net** rents in the case of an agent. If the landlord makes an application to HMRC under the Non-Resident Landlord (NRL) Scheme, it is possible to receive the rents **gross** (i.e. without a tax deduction), provided certain conditions are satisfied.

The position is the same for a non UK registered company which is subject to income tax for the period to 6<sup>th</sup> April 2020 on the rental income it receives but it will need to register for the NRL scheme with HMRC to avoid a tax deduction at source. From 6<sup>th</sup> April 2020 the non UK registered company will still need to be registered for the NRL scheme to be assessed to UK corporation tax.

Any tax deducted at source will be treated as a tax credit for the year, provided the non-resident landlord completes a self-assessment tax return at the end of each tax year. It is, therefore, possible to claim a refund of any overpaid tax withheld by the tenant or agent.

Once a landlord has joined the NRL scheme, provided HMRC approve their application, they will write to the tenant or letting agent authorising them to pay rent to the landlord gross, without deduction of tax.

Members of the NRL scheme must complete annual self-assessment tax returns (this includes a non UK registered company for the year ended 5<sup>th</sup> April 2020), reporting gross income and deductible expenses giving rise to a net profit or loss. Tax is payable on a profit and a loss can be carried forward and offset against future years' profit.

British passport holders and other eligible individuals are entitled to a **Personal Allowance** which from 6<sup>th</sup> April 2020 is £12,500 (it was the same amount for the year ended 5<sup>th</sup> April 2020). Non UK registered Companies will not be entitled to personal allowances.

The following table shows the UK Income Tax<sup>3,4</sup> rates for the year ended 5<sup>th</sup> April 2020 and the years ending 5<sup>th</sup> April 2020 after taking account of the Personal Allowance:

### 2019-20 Tax Year

Taxable Income	Rate	Tax	Cumulative
£0 - £37,500	20%	£7,500	£7,500
£37,501 - £150,000	40%	£45,000	£52,500
£150,001 and over	45%	-	-

### 2020-21 Tax Year

Taxable Income	Rate	Tax	Cumulative
£0 - £37,500	20%	£7,500	£7,500
£37,501 - £150,000	40%	£45,000	£52,500
£150,001 and over	45%	-	-

In most cases it will benefit landlords to register with HMRC under the NRL scheme, so that agents do not have to withhold tax and cash flow is maximised.

<sup>2</sup> This will only apply for the tax years up to and including the tax year ended 5th April 2020.

<sup>3</sup> Scotland has its own Income Tax rates from 6<sup>th</sup> April 2016 but they are only applicable for those individuals who live in Scotland.

<sup>4</sup> Wales has its own Income Tax rates from 6<sup>th</sup> April 2019 but they are only applicable for those individuals who live in Wales.

Professional help is advisable to obtain and maintain membership of the NRL Scheme. If landlords fail to keep proper records, ensure their returns are correctly filed and promptly pay tax due, they will lose their right to participate in this scheme. In such circumstances, they must revert to having 20% tax deducted at source from gross rents.

Not all applications for the NRL Scheme are successful and HMRC will only give consent if the individual has a good tax record or no previous tax exposure, and if they are certain that there is no tax evasion motive.

To summarise, a Non Resident Landlord who does not complete a UK tax return will pay tax at source at the rate of 20%. If a tax return is completed annually, any overpaid tax can be reclaimed. If the landlord joins the NRL Scheme, then rents will be paid gross providing a cash flow benefit, and tax returns must be completed annually.

### **Phased in Mortgage Interest Relief Restriction**

During the period 6<sup>th</sup> April 2017 to 5<sup>th</sup> April 2020 higher rate tax relief on loan interest was withdrawn in stages over the four tax years to 5<sup>th</sup> April 2020 for individuals, partnerships and trusts but not companies. Therefore, if you let UK residential property and the total amount of net income before interest exceeds the basic rate band (currently £37,500 without personal allowance) then this will affect your UK tax liability going forward.

The table of the phasing in of the restriction is illustrated on the table below:

<b>Tax Year</b>	<b>Amount of Interest Not Restricted to Basic Rate</b>	<b>Amount of the Interest Relieved at Basic Rate (20%)</b>
<b>2016-17</b>	<b>100%</b>	<b>0%</b>
<b>2017-18</b>	<b>75%</b>	<b>25%</b>
<b>2018-19</b>	<b>50%</b>	<b>50%</b>
<b>2019-20</b>	<b>25%</b>	<b>75%</b>
<b>2020-21</b>	<b>0%</b>	<b>100%</b>

The issue here is that where you may not have previously have had a tax liability due to the deduction of your loan interest paid, you will now need to re-adjust your planning as you may now need to commence paying Income Tax as the graduation of the loss of the higher rate tax relief increases and is eventually lost.

In some circumstances where there are multiple properties and the additional tax is significant, it may be possible to transfer the rental business over time to a company, although there are various things to take into account, one of which is stamp duty land tax (SDLT<sup>5</sup>) and the capital gains tax taking advantage of the April 2015 valuation (and where appropriate the April 2019 valuation). If you would like to discuss the possibility of a transfer, please contact Lutea on how best this may be achieved as there are many permutations in the planning.

If the UK property is used for a holiday letting business then the above changes do not apply and the interest paid in respect of the mortgage will continue to be deductible against the rents received and higher rate tax relief will continue to be allowed. If you wish to explore the possibility of running a holiday letting business, please contact Lutea for further information.

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<sup>5</sup> Any reference to SDLT (“Stamp Duty Land Tax”) for England and Northern Ireland is also a reference to LBTT (“Land & Buildings Transaction Tax”) in Scotland and LTT (“Land Transaction Tax”) in Wales.

## Make Tax Digital (“MTD”)

In line with the comments that were made in the UK Budget announced in March 2020, it is expected that all non-corporate landlords who are in receipt of gross rental income of more than £85,000 will be expected to be brought into MTD from April 2021. In the following tax years other landlords with lower rental income thresholds will follow. If in a later tax year your rental income should lower to below the MTD registration threshold you will continue to be subject to MTD on the basis you were enrolled on an earlier date as eventually every self employed trader and landlord will be enrolled at some point.

Please note that the MTD initiative is not for Companies but it will include Partnerships and Trusts.

If you already let commercial property, then you may already be VAT registered and therefore may already be subject to MTD for VAT. The difference here will be that taxpayers will be asked to file on a quarterly basis online details of their rental income and expenses and pay any income tax due on a quarterly basis. HMRC cite the following advantages to the new proposed system:

- That it will make your business **more efficient** as it will ensure that your records for the business are up to date and that you are able to file the information to HMRC regularly and pay the tax due regularly. This will then curtail the need to file an annual Self Assessment tax return for the property business;
- As a consequence of the regular reporting, it will mean that the business is **more effective**. HMRC say that your business will be more effective as you will understand that the income and the expenses of your business on the basis you are regularly drawing up the income and expenses of the business. They say that the productivity of the business will increase; and
- As a consequence of the efficiencies and the regular reporting it will **become easier for the taxpayer to get their taxes correct**.

Having said that, there is still the need to complete a quarterly return and pay income tax on a quarterly basis and also once a year to complete an ‘end of year statement’ (rather like a reconciliation statement) which will then reconcile the income tax paid over to HMRC during the previous 4 quarters. As you may observe there will be onerous issues going forward and therefore it is important advice is obtained at an early date to ensure that MTD compliance obligations are observed. This is further complicated if the business is a partnership as this statement will form part of the individual partners’ returns to HMRC.

### *What happens if I get this wrong?*

If you get the registration, filing and payments of the tax obligations incorrect then there will be penalties and surcharges on the late paid income tax. It is anticipated that HMRC will have a “soft touch” approach while the system is being implemented. The penalties will be governed by a system of points which will be accumulated over a period of time for any infringement and can be wiped either by way of incurring a penalty or by obeying the rules and over a period of time and as a consequence the points are wiped.

The legislation for the introduction of MTD was completed in 2017. The delay of the income tax implementation has been caused by HMRC taking responses from professional bodies and other interested parties to ensure that the appropriate technology is available to implement the system smoothly.

If you need more information concerning MTD for income tax and you think you are likely to be affected then please contact Lutea without delay.

## Inheritance Tax

Non-UK residents buying property in the UK need to be aware of Inheritance Tax, which is payable in respect of all UK situated assets. Various exemptions and reliefs are available which the purchaser needs to consider before acquisition. The use of a company to hold such assets may also offer certain tax advantages and Lutea can separately advise on this. The death rate for Inheritance Tax is currently 40% of the value of any UK assets over the nil rate band of £325,000.

## UK Property Owned Through a Company

If you own shares in a company, which are directly attributable to UK residential property, they will be subject to an inheritance tax charge when you die. The rate of Inheritance Tax is 40% and therefore any tax liability may be large but will not be in respect of the whole value of the UK residential property owned by the company. There may be planning opportunities to mitigate the value of the shareholdings and how they are held by other members of your family. It is important to seek UK tax and legal advice to understand the implications of this in your particular circumstances. You might also consider seeking independent financial advice to see if you can mitigate the potential inheritance tax by taking life insurance in respect of the potential value of the Inheritance Tax liability.

The UK Corporation Tax rate is 19% for all Companies from 1<sup>st</sup> April 2020. Prior to this date Non UK Companies were assessed on UK rental income at an Income Tax rate of 20%.

Given this difference in rates between offshore and UK companies, the Capital Gains Tax payable on disposals of UK residential property (See Below) and the additional 3% SDLT<sup>6</sup> rate (See Below), it may be more efficient from a tax and other costs standpoint, to consider incorporating the rental business using a UK company. There may be some SDLT mitigation allowed on the transfer of the property but this will be dependent upon the exact circumstances. Please refer to Lutea for specific guidance and specific advice.

Using a company, whether registered offshore or in the UK, would reduce the tax rate payable on the rents and facilitate the continuance of a full deduction of loan interest from the rents going forward<sup>7</sup>. This can also be tax efficient for a long term non-UK resident shareholder because dividends can be paid out of the company to the shareholder with no UK tax liability.

It may be possible to review the tax residence status to ensure that an offshore company falls within the scope of UK corporation tax rather than the income tax regime by ensuring the company is classed as a “UK permanent establishment” which may be able to be done by appointing UK resident directors in the company and also ensuring that the tax residence of the company is in the UK (this will be a moot point from April 2020 as all UK rental businesses will need to be assessed to corporation tax). Lutea may be able to offer directors, if this is necessary, as well as assistance on whether other tax technical points necessitates a UK residence status for an offshore company.

### **ATED “Annual Tax on Enveloped Dwellings”**

If you own UK residential property through a company, and the property is not let and doesn't fall within certain other ATED exemptions, there will be an obligation to pay an Annual Tax on Enveloped Dwellings (“ATED”) charge. This involves the completion and submission of an annual charge return, where the value of a property is above £500,000 as at 1<sup>st</sup> April 2017 or on acquisition after 1<sup>st</sup> April 2017 (see “Property Value” bands in the tables below). There is an obligation to file “nil” returns where the value of the property falls into the Property Value Bands even though it is covered by an exemption.

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<sup>6</sup> Any reference to SDLT (“Stamp Duty Land Tax”) for England and Northern Ireland is also a reference to LBTT (“Land & Buildings Transaction Tax”) in Scotland and LTT (“Land Transaction Tax”) in Wales.

<sup>7</sup> The Global Debt Cap rules are not anticipated to be involved in any planning. This will be covered in the tax advice.

The tables below show the amount of the tax for each property value band. Property valuations will need to be undertaken by a professional property valuer to provide a 1<sup>st</sup> April 2017 valuation report and you should obtain appropriate tax advice to understand whether a pre-banding check is required by HMRC as a result of that valuation.

The tax bands are dependent upon the value of the property. If there is more than one property owned by a company then an ATED return will need to be filed for each property. In all circumstances you need to seek professional advice when completing any tax return as an incorrect or a late filing may incur penalties and interest on the accompanying tax payment.

<b>Property Value</b>	<b>Tax Payable For the Year Ended 31<sup>st</sup> March 2020</b>
Up to £500,000	NIL
£500,001 to £1,000,000	£3,650
£1,000,001 to £2,000,000	£7,400
£2,000,001 to £5,000,000	£24,800
£5,000,001 to £10,000,000	£57,900
£10,000,001 to £20,000,000	£116,100
£20,000,001 and over	£232,350

<b>Property Value</b>	<b>Tax Payable For the Year Ended 31<sup>st</sup> March 2021</b>
Up to £500,000	NIL
£500,001 to £1,000,000	£3,700
£1,000,001 to £2,000,000	£7,500
£2,000,001 to £5,000,000	£25,200
£5,000,001 to £10,000,000	£58,850
£10,000,001 to £20,000,000	£118,050
£20,000,001 and over	£236,250

The list of the most relevant exemptions from the ATED charge are as follows: letting the property; holding the property open to the public for at least 28 days a year; developing the property for resale as a property developer; owning the property as company stock in trade as a property trader; acquiring the property under a regulated home reversion plan; providing living accommodation to employees of the company where the company is a trading business; the property being a farmhouse occupied by a farm worker or former long serving farm worker and where the company is a registered provider of social housing.

If the property owned by the company is to be used for family members or as a home then an ATED charge will apply. In view of the ATED charge, Inheritance Tax and the SDLT 15%<sup>8</sup> charge on the purchase all applying to personally used property owned in a Company it may be better to personally own the property. In all circumstances you should seek UK tax advice to look at your circumstances and the options available to you to minimise your exposure to these tax charges.

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<sup>8</sup> From 1<sup>st</sup> April 2021 it is expected that there will be a further SDLT 2% surcharge for a Non Resident purchasing UK residential property. Therefore, the ATED charge for SDLT will be 17% of the value of the purchase cost of the property for a non UK resident company in England and Northern Ireland. The surcharge will also apply to Non UK Resident individuals as well.

# Capital Gains Tax

From April 2015 non-UK resident individuals, trustees and companies became liable to Capital Gains Tax on the sale of UK residential property.

From 5<sup>th</sup> April 2019 all UK disposals of land, either directly or indirectly, by non UK resident individuals or companies will fall into a capital gains tax charge. The major difference, since April 2015, is that any disposal of a commercial building or sales of land that previously escaped tax will now fall into a capital gains tax charge that has accrued since 6<sup>th</sup> April 2019.

The main points are as follows:-

1. For non-UK residents only residential property gains from 6 April 2015 will be taxed and from 6<sup>th</sup> April 2019 on all UK property. In most cases, a choice of rebasing to 5<sup>th</sup> April 2015 (5<sup>th</sup> April 2019 on all other UK property) values or time-apportioning the whole gain (profit) will be available. However, this will only be the case if the legal or beneficial owner of the land is long term non UK resident.
2. In summary, there are two types of disposals that will be taxed going forward from 6<sup>th</sup> April 2019:
  - a. The direct disposal (i.e. where the individual owner or the offshore company disposes of UK land);
  - b. The indirect disposal (i.e. where the non UK resident owner of at least 25% of the ordinary share capital of a UK “property rich” company disposes of their shares).
3. The method of the reporting will not change. Non-UK resident individuals and companies will need to report to HMRC **within 30 days**<sup>9</sup> of the date of completion of the sale that a disposal has been made and pay any tax that is due at the same time, unless they are already part of the self-assessment system. In addition, the non UK resident company will also need to prepare to register for UK corporation tax within 3 months of the completion of the sale if they are not already paying corporation tax through the rental income from the property being subject to UK corporation tax.
4. A company that is affected by the new legislation is one that is described as Close (ie a company that is controlled by 5 or fewer participators who have sufficient rights to have a share all of the assets on a winding up of the company) and that 75% of the gross assets, before liabilities, on the company’s balance sheet are represented by UK land. This is known as a “UK Land Rich Company”. This test is known as the “Richness Test”.

If shares in a “UK Land Rich Company” are sold by a non UK resident individual, the disposal of the shares will need to be reported within 30 days of the stock transfer being signed and dated. The shareholders who are affected by this legislation are those with a shareholding of at least 25% of the rights to vote and to claim assets on a winding up of the company.

5. In view of the changes in the legislation, **the ATED Related Capital Gains provisions has been removed from the legislation for disposals that completed**

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<sup>9</sup> See Paragraph 9 below for reporting the disposal of the UK land and the payment of the Capital Gains Tax from 6<sup>th</sup> April 2020.

**on or after 6<sup>th</sup> April 2019.** This was the charge for capital gains tax on any period of time where the UK residential property was subject to an ATED charge.

If the UK residential property is sold prior to 6<sup>th</sup> April 2019 then ATED Related Capital Gains will be payable either for the whole period of ownership or in part. This tax will only be applicable if a company disposes of a UK residential property and it had at any time previously been subject to an ATED charge (noted on pages 7 & 8 above). Companies owning residential properties may move between the ATED-related capital gains and Non Resident Capital Gains regimes, dependent upon the use of the residential property, although ATED-related charges will take precedence to prevent double taxation. The ATED-related capital gains rate is 28%. If this is necessary to calculate a period of ATED-related capital gains then a valuation of the property will be required at the time the property first became chargeable to an ATED charge. Please refer to Lutea for further advice.

6. Like the introduction of the UK residential capital gains tax charge from 6<sup>th</sup> April 2015, where other UK land and property is disposed of the assessable capital gains tax charge will commonly be calculated based on the value of the property from 5<sup>th</sup> April 2019. Therefore, it is advisable for non UK resident owners of Commercial / Mixed Use property through either offshore Close companies or personally owned to arrange a valuation report prepared by a Royal Institute of Chartered Surveyors (RICS) registered member. It is recommended to get a full valuation report as the directors of the company and the individual will be dependent upon these reports to provide a value either on a disposal of the UK property or to aid a calculation of a value of the Company's shares should there be a later sale of shares. HMRC may challenge the valuations at a much later date and therefore the taxpayer may need to defend the valuation provided in the report and this may be difficult if the report is not contemporaneous with the period that the value is being sought (ie you instruct a valuer to prepare a report for a April 2019 valuation for a property in 2029. The valuer will at that time may well be challenged to ensure that any value will be accurate in those circumstances.)
7. **From 6<sup>th</sup> April 2020, in addition to Non UK Resident individuals and trustees, UK resident individuals, partners and trustees will need to report all disposals of UK land to HMRC within 30 days of the date of completion of the sale and pay any capital gains tax due on that sale by the same due date.**<sup>10</sup> To report a capital gain there is a requirement to obtain a Government Gateway User ID and Password through the GOV.UK website, which takes time. To avoid late a reporting penalty arrange to speak to Lutea at an early date so that the reporting of the capital gain on the disposal of the property may be planned.

Note that it is not possible to carry back a capital loss in the tax year of disposal to set off in full, or in part, the tax due in the return of the capital gain. The set off will be made once the Self Assessment tax return for the tax year has been completed and then any repayment of capital gains tax may be claimed.

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<sup>10</sup> The HMRC page may be found at: [https://www.tax.service.gov.uk/capital-gains-tax-uk-property/start/report-pay-capital-gains-tax-uk-property?\\_ga=2.90442130.928565599.1586155392-1772739671.1576928650](https://www.tax.service.gov.uk/capital-gains-tax-uk-property/start/report-pay-capital-gains-tax-uk-property?_ga=2.90442130.928565599.1586155392-1772739671.1576928650).

No return may be necessary where the capital gain is totally relieved by the application of the Principal Private Residence Relief.

Companies will continue to disclose their disposals of UK land through completion of corporation tax returns.

8. The rate of tax for individuals for the disposal of UK residential property will be 18% or 28% and for UK commercial property and other land will be 10% or 20% depending on the level of total UK income and chargeable gains for the year. The rate for trustees will be 28% for UK residential property or 20% for UK commercial or other UK land. For non UK registered companies the rate is corporation tax rate of 19%<sup>11</sup> with the benefit of indexation allowance if applicable up to 31<sup>st</sup> December 2017. For a UK company the UK corporation tax rate is also 19%.
9. The annual exemption (£12,000 for the year ended 5<sup>th</sup> April 2020, £12,300 for the year ending 5<sup>th</sup> April 2021) is available to any individual who has a UK assessable capital gain to the exception of those non UK domiciled individuals who are UK resident and claim the Remittance Basis of assessment. Any chargeable capital gain which is less than the annual exemption will not incur a tax charge but you may still need to complete a tax return.

It needs to be noted that a company is not entitled to a capital gains tax annual exemption on the capital gains it makes.

10. If a property is sold at a loss there may still be a need to file a tax return with HMRC. Where capital losses arise in the Non Resident Capital Gains Tax regime, the loss is worth declaring as it may be set against other in tax year and future tax year Non Resident Capital Gains. If the owner of the capital losses should become UK resident then these losses may be used against capital gains incurred on disposal of other assets that occurred after becoming UK tax resident. If you have any queries, please speak to your Lutea contact.

If a capital loss arises in a period where the property is assessable to an ATED Charge, then that capital loss may only be used against other ATED Related Capital Gains and will not be able to be transferred to other gains arising on non ATED residential property. Therefore, if the company has ATED Related Capital Gains losses at this time then these losses will be stranded and will not be able to use them against any other charge.

11. It is worth mentioning that there are exemptions for the tax for large scale institutional investment companies (such as Real Property Investment Trusts (REIT)) investing in UK residential and other UK property. Please contact Lutea if you require information concerning this matter.

The above are some of the main points but there are others that also need to be considered. As a general comment when disposing of a property in the UK it is very important to get specialist advice as there are many variables to get right in any UK capital gains tax computation. Please contact Lutea to ask for this assistance.

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<sup>11</sup> As offshore companies are assessable to UK corporation tax for capital gains from April 2019 the tax rate is 19% and remains at the same rate for the year commencing 1<sup>st</sup> April 2020.

## Purchasing UK Residual Property

When purchasing a property in the UK you will need to pay a tax charge based on the value of the property or the consideration of the transaction.

There are various names for the tax to be imputed on the purchase dependent where in the UK the property you are purchasing is located. They are the following:

### Stamp Duty Land Tax (“SDLT”)

In England and Northern Ireland when you purchase any land or property you will probably need to address payment of SDLT.

From 8th July 2020 the SDLT residential property table for a purchase of a residential property has changed for a temporary period until 31st March 2021<sup>12</sup>. This will mean that any residential property purchase in England and Northern Ireland will be subject to temporary reduction in charges. This is because the lower band of SDLT has been increased from £125,000 to £500,000. The temporary tables for residential property purchases for your purposes will be the following:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£500,000	0%	0.00
£500,001	£925,000	5%	£21,250.00
£925,001	£1,500,000	10%	£57,500.00
Above £1,500,001		12%	

The standard Stamp Duty Land Tax (“SDLT”) table below are the rates for the purchase of residential property in England and Northern Ireland.

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£125,000	0%	0.00
£125,001	£250,000	2%	£2,500.00
£250,001	£925,000	5%	£33,750.00
£925,001	£1,500,000	10%	£57,500.00
Above £1,500,001		12%	

You will note for the temporary period any property that is more than £500,000 in value will automatically have a reduction of £15,000 in the SDLT liability if the completion of the purchase contract takes place before 1<sup>st</sup> April 2021.

If the property is purchased for more than £500,000 and is subject to an ATED charge within three years of purchase, then the SDLT charge will be 15% on the whole value of the property.

The additional rate of SDLT will apply where the purchaser already owns a residential property interest somewhere in the world or the purchaser is to purchase the property in joint names and that other party in the transaction has already got an interest in a residential property. Therefore, any further residential property purchased by a sole owner or joint owners will incur an additional 3% charge. This will also cover beneficial ownership arrangements you may have in another residential property where the property may not actually be registered in your name. This will not include shorthold interests in English and Northern Ireland residential property.

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<sup>12</sup> The detailed press release can be found at:

<https://www.gov.uk/government/publications/temporary-increase-to-stamp-duty-land-tax-nil-rate-band-for-residential-properties/temporary-increase-to-stamp-duty-land-tax-nil-rate-band-for-residential-properties>

The table for the rate of SDLT for additional properties is set out below during the period 8<sup>th</sup> July 2020 to 31<sup>st</sup> March 2021:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£500,000	3%	£15,000
£500,001	£925,000	8%	£34,000.00
£925,001	£1,500,000	13%	£74,750.00
Above £1,500,001		15%	

Following the end of the temporary reduction period the table will revert to the normal table of the following:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£125,000	3%	£3,750.00
£125,001	£250,000	5%	£6,250.00
£250,001	£925,000	8%	£54,000.00
£925,001	£1,500,000	13%	£74,750.00
Above £1,500,001		15%	

As you will see this is a significant increase in SDLT if you are considering investing in buy to let property in England and Northern Ireland. If you purchase the property directly via a company and it is not caught by the ATED rules, then the additional rate of tax (15%) will not apply unless you stop letting the property within 36 months of the completion of the sale and then the 15% rate will retrospectively be imposed.

You will also note that the temporary increase of the lower band will give a similar £15,000 reduction in the SDLT if the property is valued at more than £500,000 and is completed before 1<sup>st</sup> April 2020. For those who are currently not resident in the UK and are looking to purchase residential property in England and Northern Ireland then please look at the point below concerning “non-residential Stamp Duty Land Tax surcharge”.

Where you are acquiring a large property with multiple titles or there are multiple dwellings or living spaces then it may be possible that an alternative calculation for the SDLT may be acceptable with a significant saving.

If you are purchasing 6 or more UK residential properties in one transaction then this will be subject to a separate table of rates.

It is worth mentioning, that SDLT will need to be reported online and paid within 14 days of the completion of the purchase transaction by the purchaser.

In the UK 2020 Budget it was announced that from 1<sup>st</sup> April 2021 there will be an introduction of the **non-resident Stamp Duty Land Tax surcharge** which will represent an additional levy for the purchase of English and Northern Ireland residential property of 2% on top of any other SDLT charge. This charge will be levied on any purchaser who is noted as not UK resident at the time of the purchase. At the time of writing we are still waiting for Government responses to the consultation which was issued in February 2020. It is anticipated that the final draft of the rules will be issued in the Autumn of 2020 after the expected Budget. What is clear by reading the consultancy document is that any non UK company will need to pay the additional levy where the beneficiaries are not UK resident.

Therefore if you are non resident and are looking to purchase a English Residential Property you would be well advised to look to complete any purchase on or before 31<sup>st</sup> March 2021. The increase

in rates on a £500,000 property to complete on or after 1<sup>st</sup> April 2021 will be £7,500 + £15,000 (the effective temporary reduction in rates) = £22,500.

Please contact Lutea to get more information if you have any queries in connection to SDLT.

## Land & Buildings Transactions Tax (“LBTT”)

The Stamp Duty Land Tax applies in Scotland and is administered by Revenue Scotland. The system of tax is similar to that of the method described above. The table for Residential Property is as follows:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£145,000	0%	0.00
£145,001	£250,000	2%	£2,100.00
£250,001	£325,000	5%	£3,750.00
£325,001	£750,000	10%	£42,500.00
Above £750,000		12%	

Like in England & Northern Ireland, Scotland has a charge for additional properties called the “Additional Dwelling Supplement”. The table for the additional dwelling supplement is as follows and is valid from 25<sup>th</sup> January 2019:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£145,000	4%	£5,800.00
£145,001	£250,000	6%	£6,300.00
£250,001	£325,000	9%	£6,750.00
£325,001	£750,000	14%	£59,500.00
Above £750,000		16%	

The additional supplement will apply automatically for companies and trusts purchasing residential property.

The date by which the LBTT and the return needs to be filed by is 30 days after the date on which the purchase of the property was completed.

Please note LBTT also allows similar reliefs and definitions noted in the SDLT legislation.

There are currently **no** plans to have non-resident levy of 2% similar to SDLT from 1<sup>st</sup> April 2021.

### Temporary Period for Increase in Initial Threshold From 15<sup>th</sup> July 2020 to 31<sup>st</sup> March 2021

Scottish Revenue has announced an increase in the lower threshold to increase this to £250,000 so that the first £250,000 of value is at 0% and the rest of the table will be the same as above. This will make a saving of £12,100 on a purchase of a residential property. The period of the temporary will be in place to 31<sup>st</sup> March 2021.

Therefore, the main residence buyers or first time buyer table is as follows:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£250,000	0%	0.00
£250,001	£325,000	5%	£3,750.00
£325,001	£750,000	10%	£42,500.00
Above £750,000		12%	

In respect of the investment property market and second home market the table is as follows:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£250,000	4%	£10,000.00
£250,001	£325,000	9%	£6,750.00
£325,001	£750,000	14%	£59,500.00
Above £750,000		16%	

There are no plans for the moment to include a non resident supplementary charge from 21<sup>st</sup> April 2021.

Please contact your Lutea contact if you need advice concerning this matter.

## Land Transaction Tax (“LTT”)

From 1<sup>st</sup> April 2018 SDLT was devolved to the Welsh Assembly and is named “Land Transaction Tax” (“LTT”). The system is similar to both SDLT and LBTT. The LTT rates are as follows:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£180,000	0%	0.00
£180,001	£250,000	3.5%	£2,450.00
£250,001	£400,000	5%	£7,500.00
£400,001	£750,000	7.5%	£26,250.00
£750,001	£1,500,000	10%	£75,000.00
Over £1,500,000		12%	

In line with the rest of the United Kingdom, if you purchase additional residential property there will be an additional 3% LTT payable.

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£180,000	3%	£5,400.00
£180,001	£250,000	6.5%	£4,550.00
£250,001	£400,000	8%	£12,000.00
£400,001	£750,000	10.5%	£36,750.00
£750,001	£1,500,000	13%	£97,500.00
Over £1,500,000		15%	

Please note LTT also allows similar reliefs and definitions noted in the SDLT legislation. Therefore, please contact Lutea if you need advice concerning this matter.

The date by which the LTT and the return needs to be filed by is 30 days after the date on which the purchase of the property was completed.

There are currently **no** plans to have non-resident levy of 2% similar to SDLT from 1<sup>st</sup> April 2021.

As a general point for the management of SDLT, LBTT and LTT, where an individual already owns property in England and an additional property is purchased in, say, Wales then the additional 3% of LTT will be payable as the legislation will look at the position on a global basis.

If a Scottish or Welsh property is purchased for more than £500,000 in a company and is expected to be assessed to ATED there is no equivalent ATED SDLT rate of 15% but the normal Additional Supplement rate would be payable.

In Wales there is no temporary increase in the lower band of the LTT for residential property for the investment property or second home market in the period to 31<sup>st</sup> March 2021. There is however, an increase in the lower band for moving the main residence purchase and for the first time buyer market as the table is as follows:

Value From	Value To	Rate On Band	Amount Of Tax On Band
£0	£250,000	0%	0.00
£250,001	£400,000	4%	£6,000.00
£400,001	£750,000	7.5%	£26,250.00
£750,001	£1,500,000	10%	£75,000.00
Over £1,500,000		12%	

There are no plans for the moment to include a non resident supplementary charge from 21<sup>st</sup> April 2021.

## Planning Points

Below is a summary of the points that have been considered above:

- Consider the use of a company if you and your partner are personally in receipt of UK rental income where the income after expenses is in excess of £37,500 for a non UK/EU citizen or £50,000 for a UK/EU citizen. These represent the level of income at which UK personal income tax rates are assessed at 40%.

In conjunction to the above point, from 6<sup>th</sup> April 2017 over the next three tax years higher rate income tax relief in respect of loan interest paid on mortgages secured on buy to let UK residential properties will be withdrawn. Therefore, it is possible that up to that point the portfolio escaped payment of tax but will now need to pay UK income tax. Dependent on the tax at stake, incorporating the buy to let property portfolio may be logical planning. This needs to be considered on a client by client basis. Please contact Lutea to find out more.

- In the case a personal buy to let portfolio there is no higher rate tax relief from 6<sup>th</sup> April 2021. Therefore, if you are planning to purchase of a property now, with a mortgage, then consider purchasing in a company especially if the expected rental income is likely to be in excess of the basic rate bands noted above.
- Where income is accumulating in a UK company and the shareholders are long term non-UK tax residents then consider only paying UK dividends. These payments are not taxable in the UK.
- In view of the temporary increase in the lower bands of SDLT and LBTT for the period to 31<sup>st</sup> March 2021, it is worth looking to ensure that as many purchases are completed on or before 31<sup>st</sup> March 2021 to take advantage of the reduction of the rates. There is a possible way of substantially performing the purchase of the property before the completion date but this will need specialist legal advice. Please arrange to speak to your Lutea contact.
- If you are planning to purchase an English or Northern Ireland residential property in the near future then you need to ensure that the transaction is completed by 31<sup>st</sup> March 2021 as the **non UK resident SDLT Surcharge** will become effective from 1<sup>st</sup> April 2021. From information in the consultation document published in February 2020, if you are returning to the UK and intend to be present in the UK for more than 183 midnights in the 12 months following the purchase of the property then you will be eligible for a refund

of the surcharge. Also, you will not need to pay the surcharge if you have been present in the UK for up to 183 midnights in the 12 months prior to the completion of the purchase. From April 2021 any returning overseas expat to England may wish to rent a property before purchasing their family home to ensure they do not have to pay the surcharge.

- Where the shareholders are UK resident and the company has loans outstanding, the UK shareholders can draw down on the loan balances (where cash is available) as any capital withdrawals from the company will be tax free in the UK. Dividends may be taxed up to 38.1% in contrast.
- Dependent upon the number and the value of the individual properties owned personally, it is possible to plan for the transfer of the properties to a company in a tax efficient manner using reliefs as mentioned under the SDLT section. In many cases the purchase of property in Scotland and Wales will also attract similar reliefs and exemptions.
- UK Residential property is liable to inheritance tax in the event of death for non UK resident and UK resident individuals. For inheritance tax purposes, the use of a UK company may be attractive because if the shares belonging to the UK company are spread among the members of the family, then through the minority share discounts this can vastly reduce the value of any exposure to inheritance tax in an individual's hands.

If you are planning to live in the UK in the future, it is advisable to own the intended residence personally and not through a trust or a company as to do so may attract unintended tax consequences. For a protected offshore trust this may taint the trust and therefore may cause all the income and gains of the trust to be taxed on the UK resident settlor or beneficiaries. In the case of a company ATED charges may commence to be payable.

As you will have read above there are many points to think about especially if you are considering building a portfolio of UK residential buy to let properties. It is best to consider your options from a UK tax perspective at an early stage so you are aware of the issues, and Lutea may provide planning advice where appropriate. Therefore, in all cases please contact your Lutea director to ask for further assistance in ensuring that your UK tax affairs are compliant and are planned efficiently.

In this booklet we have concentrated upon the rental side of UK residential property investment. If you are considering land development in the UK for commercial and/or residential purposes then Lutea can also assist in providing advice to cover the appropriate trading entity, availability of capital allowances, Value Added Tax ("VAT"), looking at any SDLT planning where appropriate, employment taxes and looking at the individual shareholders' / investors' UK tax exposure.

If you are considering land development, then think about dealing with the business in a separate company away from the buy to let business. Once the land has been developed and you are looking to let the new property look to transfer that property to the buy to let company. There are capital gains tax/ corporation tax, Value Added Tax (VAT), SDLT and possibly Construction Industry Scheme (CIS) issues to consider in connection with this matter but Lutea can work with the land developer and the investors to minimise the exposure.

# Tax Agent Procedures

Lutea Consultancy Limited (“Lutea”) has expertise in managing the tax affairs of overseas property owners. As soon as we have full details of rental income, financing costs and annual expenses, we are able to assess how much tax (if any) will be payable.

## Speed and Efficiency

Our service for overseas property owners is designed to manage your tax affairs with the maximum efficiency, and the minimum of red tape. Once we have the information required, we will:

- Calculate tax liabilities, taking into account all legitimate costs and expenses
- Negotiate relevant concessions with HMRC
- Agree a sum (if any) that will be withheld for payment to HMRC by managing agents
- Arrange for personal tax allowances to be incorporated where available
- Review copies of all existing correspondence with HMRC
- Appeal against estimated or incorrect tax assessments
- Make applications for postponement of tax payment, if appropriate
- Agree tax on your behalf with HMRC officials
- Request repayment of surplus tax withheld and paid across to HMRC

## On-Going Service

Although we will prepare and file annual Income Tax returns on your behalf, our service is not limited to once-a-year tax filing but it is ongoing as the year progresses.

We will review your tax affairs each year to ensure that the statements obtained from your managing agent are correct and that withholding tax is only deducted where it is expected to be due.

We recognise that you require these matters are handled with minimum of fuss and undertake to keep you fully informed on the status of your investment.

Accordingly you will receive an annual statement, made up to 5<sup>th</sup> April each year, clearly showing:

- Rental income
- All allowable expenses
- Financing costs

We will notify you of any tax paid or to be paid and, if appropriate, whether any tax withheld can be reclaimed.

## What Do We Charge?

Lutea have considerable experience of these matters, and therefore are able to keep our fees at a modest level, ensuring value for money.

Lutea's annual tax compliance charge will depend upon a number of different factors which are:

- The degree of assistance;
- The technical input required to complete the tax return and the associated rental account; and
- The quality of the records provided by the letting agent or the owner of the property.

A competitive fee quotation will be provided based on all these factors and will be based on our standard terms and conditions of business.

Initially, we will need to charge a one off fee of **£250** to cover the procedure of registering with HMRC as your agent under the Non Resident Landlord Scheme and the self-assessment system or corporation tax system as appropriate. This will also cover the basic initial administration charge to set up our records. If an additional fee needs to be raised to cover any additional client due diligence procedures, then this will be advised to you as appropriate.

In some circumstances there will be a need to file an **ATED** return for each property owned by a company valued over £500,000 where the property is unlet and doesn't qualify for an exemption. The fee quotation of completion of an **ATED** return is from **£450**. This will cover the completion, submission of the return and the administration for the payment advice for any tax due. If there is a need to arrange valuations for the property to allow the calculation of the tax to be completed then we can assist the RICS valuer to ensure that the appropriate valuations are obtained.

If you would like us to register and administer a company for you and deal with all the UK tax compliance matters which apply to the properties owned by the company then please contact us for a specific fee quotation based on the number of properties owned and bookkeeping and administration requirements.

The above rates may be reviewed from time to time as appropriate, and different terms could apply in the case of offshore company owners and larger or multiple investments. But basic costs will always be discussed and agreed in advance. Should you wish, you can instruct your managing agent to pay our fees out of rental income collected by them.

If the HMRC in the UK raise an enquiry when examining your property investment, we will report to you in the first instance and advise you of any additional professional costs which may arise. Similarly, if you require additional advisory services - perhaps relating to the ownership of an investment or its financing – we will discuss with you any additional fees.

On behalf of our offshore clients, who are not resident in the European Union, our costs will be invoiced without VAT. If you are resident in an European Union country then VAT will need to be added to our fees. If the costs are in connection to the administration or tax compliance for a UK company, VAT will need to be added to any cost.

It is normal with all of our clients to add out of pocket disbursements when they are incurred where it is deemed appropriate to do so. When this occurs we will advise you.

## The Next Step

In order to manage your affairs with the greatest efficiency and minimum time commitment on your behalf, we will require basic information from you.

We also need a letter of appointment and your authorisation to receive a variety of additional documents from other sources. These are:

- Client Due Diligence material for the identification of the client to allow a client engagement to be considered - certified copies of a current passport and a recently dated utility bill as proof of home address are required;
- Copies of rental agreements (tenancies), statements & other relevant information from your managing agent;
- Copies of any assessments and other correspondence from HMRC;
- Information from the provider of the loan used to purchase the property;
- Appropriate copies of legal documents or agreements from your solicitors; and
- Appropriate signed authorities with letting agents, any UK land agent and solicitors to be able to correspond with them to obtain the information we require for the completion of your UK tax return and to provide you with appropriate tax advice where it is requested by you.

Please send the originals and any supporting documents requested to David Bateman at Lutea Consultancy Limited or Christian Brown at Lutea (Hong Kong) Limited, retaining copies for your own records.

Upon receipt, we will acknowledge your appointment of Lutea, setting out the services to be performed in a letter of engagement. We will then commence the services set out herein in a timely fashion.

## For Further Information

If you would like additional details on our services for overseas landlords, or any of the other services Lutea provides, please contact:

### ***Lutea Consultancy Limited***

David Bateman

Email: [dbateman@luteauk.com](mailto:dbateman@luteauk.com)

Office Address:

7<sup>th</sup> Floor, Network House,

Basing View,

Basingstoke,

Hampshire

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Office Telephone:

+ 44 (0)1256 340 972

If you are situated in South East Asia you may wish to contact:

### ***Lutea (Hong Kong) Limited***

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