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The New CGT Regime: What Is the Impact for Lenders and Borrower/Sponsors?

The new CGT regime seeks to level the playing field between domestic and overseas investors in UK real estate, with CGT being applicable to non-resident investors going forward, unless they fit within specific exemption/election categories.

Impact on investors

With respect to existing investors, there are certain transparency and exemption options available for certain qualifying co-investment vehicles. Provided that the investment vehicles are eligible to make these elections or apply for these exemptions in time, these investors can ensure the CGT application remains substantially the same as before. Therefore, it is important to be prepared for these changes and it may be worth examining your current investment/holding structure to ensure you're ready for these new changes.

Where the investment vehicle does not qualify for any elections and/or exemptions, any capital gains assessed on disposal will be made with reference to the value of the property as at 31 March 2019, meaning that all capital gains accrued prior to that date are effectively grandfathered. In determining the rebase value, HMRC allows investors to rely on the value on the investor's balance sheet, but investors may nevertheless want to conduct a full valuation which adheres to the Royal Institution of Chartered Surveyor's Valuation Professional Standards (also known as a "red book" valuation).

Investors who hold real estate for trading purposes (e.g., those investing in hotels, the restaurant business) may continue to rely on the trading exemption that was previously available. This trading exemption has many rules and complexities and so care should be taken in making the assessment and professional advice should be obtained.

Impact on lenders

As a result of the changes to this regime, you may find that many of your clients are looking to make elections, or perhaps even adjust their holding structure (whether existing structures or new structures going forward) with respect to their UK real estate holdings. Depending on the security structure of your loans, amendments may be required to accommodate these changes. For example, with the UK Government intending to renegotiate the double tax treaty with Luxembourg and also the introduction of anti-forestalling rules, one consequence may be that the Luxembourg holding entity may fall out of favour in the future, and sponsors may prefer setting up new holding entities in other jurisdictions. The NRCGT anti-avoidance provisions will also need to be considered in relation to any proposed restructuring.

In addition, where investors are not able to benefit from exemptions and a CGT liability arises on the sale of the UK real estate, consideration may need to be given to how such a CGT liability will be accounted for in current structures or would be accounted for in new structures. This will be particularly important in enforcement scenarios. Where HMRC ranks as an unsecured creditor, consideration should be given to the contractual protections afforded to investors.