

Autumn Statement 2022

Particular points for overseas investors in UK property

Practical Tax Guide from CMS

November 2022

Longer term trends

Despite the recent fiscal turbulence, the UK remains an attractive jurisdiction for overseas investment in real estate

Short term political turbulence

With global political and economic turmoil as a backdrop, recent headlines have led to a perception that the UK is a country which is experiencing a particular period of uncertainty.


However, much of that uncertainty has pleasingly calmed since the appointment of Jeremy Hunt as Chancellor on 14 October 2022, followed by Rishi Sunak taking office as Prime Minister on 25 October 2022.

Additionally, confirmation that many of the surprising tax announcements made by the previous Chancellor, Kwasi Kwarteng, in his 'Growth Plan 2022' have been – or are soon to be – abandoned has already gone some way in re-confirming investor confidence in the UK.

The UK's attractive tax regime

The UK remains an attractive jurisdiction for investment in real estate. In particular:

- the headline tax corporation tax rate (from 1 April 2023) will be 25%. While higher than the current rate of 19% the rate is comparable to other European countries;
- it continues to be the case that real estate transfer taxes are not chargeable on the sale or acquisition of SPVs whose value is attributable to UK property;
- the UK's tax advantaged regime for holding UK real estate (Real Estate Investment Trusts, commonly known as REITs) is well-established, and the government has recently been capitalising on its increasing popularity by relaxing the conditions for entry to the regime. For those investors that can invest through REITs this will typically drop the UK tax rate from 25% to 15% on income and gains from investment properties;
- the sophisticated machinery of the UK tax landscape means that holding property in offshore structures (for example, Jersey and Guernsey Unit Trusts) is both favourable and achievable from a tax perspective;
- the UK has concluded a wide suite of tax treaties with other jurisdictions for the avoidance of double taxation.



For a more detailed overview of the UK tax regime for overseas investments in UK property, please refer to our recently published *CMS Practical Tax Guide: Overseas Investment in UK Property*

For more information in relation to REITs please refer to our published *CMS REITs brochure*.

Autumn Statement 2022

Points for investors in UK property to consider

A return to stability, and few tax surprises

In many ways, the Chancellor's Autumn Statement was notable for its lack of surprises. The headline tax points – in particular the freezing of, or decrease in, certain personal tax thresholds and annual allowances – had largely been trailed in advance, and increases in the rates of the Energy Profit Levy and a windfall tax for electricity generators were also expected in the current political and economic climate.

The sole tax change specifically affecting the UK real estate sector is that the decrease in the SDLT residential rate bands announced in September's 'mini-budget' will now be temporary, with the bands returning to their previous levels from 1 April 2025.

The intention behind the rate reduction was to stimulate the domestic residential housing market in the medium term – in the same way as previous SDLT cuts during the COVID-19 pandemic.

Other key policies relevant to the UK real estate sector

Reducing the impact of inflation: a key driver behind many of the Chancellor's policies is tackling the impact of inflation on the more vulnerable members of society. With this goal in mind, the government has announced a cap on social housing rents of 7% for 2023 to 2024 – significantly lower than the 11.1% increase which could have been allowed under current rules. Additionally, in order to support low-income home-owners with mortgages, who are dealing with rising interest rates, from Spring 2023, the government will allow those on Universal Credit to apply for a loan to help with interest payments after three months instead of nine.

Environmental commitments: alongside fiscal commitments, the UK's dedication to environmental and climate measures has been re-confirmed. To this end, the government has set a national ambition to reduce energy consumption by 15% by 2030, delivered through public and private investment, and a range of cost-free and low-cost steps to reduce energy demand.

Business rates: from 1 April 2023, business rates tax bills will be updated to reflect changes in property values since the last revaluation in 2017. An overall package of measures to support businesses in this transition was announced today.

Autumn Statement 2022 (continued)

What are we still expecting?

Changes to the Sovereign Immunity regime

The UK has long had one of the most generous sovereign immune regimes globally, in particular with regard to the types of income which can benefit from the sovereign immune exemption. A consultation published earlier this year proposed restricting this to UK interest income only, aligning the UK with many other jurisdictions. A consultation response is expected in the coming months.

SDLT rates on 'mixed use' property

For many years, the rates of SDLT for residential property have been far higher than those for commercial property. A 'quirk' in the SDLT legislation is that property which is genuinely mixed-use – even where the commercial element is small – can benefit from the lower commercial SDLT rates. This has led to a large number of attempts by taxpayers to apply the commercial SDLT rates to what they argue is 'mixed use' property, but which HMRC (and the tribunals) tend to find is actually subject to the residential rates. As such, the government introduced a consultation on 30 November 2021 signalling an intention to overhaul that position. The consultation response has been expected for a number of months.

Outcome of the UK funds regime review

In response to the review of the UK funds regime, HM Treasury has been considering the introduction of a new tax-advantaged investment fund (a "PIF") for certain types of investors (broadly, those which traditionally fall into the 'institutional' investor category).

The expectation is that the fund would be structured as an unauthorised contractual co-ownership scheme. While detail on the tax attributes of the fund have not yet been publicly released, we understand that SDLT seeding relief, income tax transparency, and specific capital gains tax treatment (whereby the capital gains will be taxed on each investor disposing of its units in the fund rather than on gains realised at the portfolio level) are all under consideration for inclusion.

Given the government's commitment to attracting growth and investment, draft legislation for the regime may be published this year.

About CMS tax

Internationally, CMS has over 500 tax lawyers supported by strong technical tax intelligence teams that identify developments in tax law and policy affecting your business. This multi-disciplinary approach helps clients develop robust structures that maximise tax effectiveness in alignment with their commercial strategy through a “one-stop shop”.

In the UK, our market-leading real estate tax practice is one of the biggest in any law firm in the country. We are an integral part of the Legal 500 and Chambers Band 1 ranked CMS Real Estate Practice and Real Estate Funds Practice.

We have a wealth of experience advising on the acquisition, holding, development and disposal of UK real estate assets. Our technical expertise combined with our knowledge of the industry enables us to advise a wide range of clients on making investments into the UK real estate market.

We work with clients at an early stage (often pre-offer) advising on the optimum acquisition structure so that any tax costs can be modelled into pricing.

We are also at the forefront of developments in taxation with our partners sat on a number of industry bodies including the tax committees of the British Property Federation and the Association of Real Estate Funds.

If you have any questions around the changes from the Autumn Budget or generally about investing in UK real estate please get in contact.



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