

MEMO# 31864

July 19, 2019

Industry Coalition Submission on UK Non-Resident Capital Gains Tax

[31864]

July 19, 2019 TO: ICI Members

ICI Global Members SUBJECTS: International/Global

Tax RE: Industry Coalition Submission on UK Non-Resident Capital Gains Tax

ICI Global and eight other collective investment vehicle (CIV) industry associations today submitted the attached coalition letter to Her Majesty's Revenue and Customs (HMRC) regarding the new UK non-resident capital gains tax (NRCGT).^[1] The new law, which imposes tax on non-UK investors (other than those exempt by treaty) in UK real estate-related investments, including real estate investment trusts (REITs), came into effect on April 6, 2019. Because the new law includes a 90-day reporting requirement for dispositions, the new law creates compliance requirements that can apply as early as July 6.

The coalition letter references the positive e-mail response that ICI Global received from HMRC on July 4^[2] responding to our request^[3] for confirmation that treaty-exempt US regulated investment companies (RICs) are not subject to the new law's registration and reporting requirements.

More specifically, the coalition letter requests formal (published) guidance that:

- CIVs subject to the tax have a 12 months accounting period, file a single annual return, and apply the standard payment regime of 9 months and 1 day after the end of the accounting period;
- Umbrella funds subject to the UK NRCGT register at the sub-fund level;
- Treaty-entitled CIVs are not subject to the NRCGT with respect to treaty-eligible investments and have no registration or reporting responsibilities with respect to them;
- A "soft landing" is provided—for some reasonable period following the issuance of further guidance by HMRC—for all CIVs with respect to any applicable registration and reporting responsibilities under the NRCGT; and
- A practical solution is provided for investors in tax transparent funds eligible for double tax relief under an applicable treaty, including provisions and/or guidance for UK investors in such funds.

The letter also urges Her Majesty's Treasury (HMT) to consider a de-minimis holding threshold of at least 10% below which such holding would not be subject to the new law and would not be taxed. This exemption would be similar to that provided under the US' Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) regime.

Finally, the letter notes that the difference in tax treatment applied to comparable UK and non-UK CIVs (with similar investor profile and investment objectives) may be considered discriminatory under EU law and a clear obstacle to the free movement of capital as provided for by Article 63 of the Treaty on the Functioning of the European Union (TFEU).

Keith Lawson
Deputy General Counsel - Tax Law

[Attachment](#)

endnotes

[1] See http://www.legislation.gov.uk/ukpga/2019/1/pdfs/ukpga_20190001_en.pdf. See also http://www.hmrc.gov.uk/gds/cg/attachments/CG-APP15__Non-resident_capital_gains_from_6_April_2019_Collective_Investment_Vehicles_draft_guidance.pdf.

[2] See Institute [Memorandum No. 31836](#), dated July 5, 2019.

[3] See Institute [Memorandum No. 31830](#), dated June 28, 2019.

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