

Register of Overseas Entities Anti-Money Laundering Update

The Economic Crime (Transparency & Enforcement) Act 2022 introduced requirements from 01 August 2022 for overseas entities that own or acquire property in the UK to register with Companies House - known as the Register of Overseas Entities.

This means that Non-Resident Landlords (NRL) in offshore jurisdictions such as British Virgin Islands, Bermuda, Canary Islands, Luxembourg or Channel Isles and Isle of Man, must now register in order to hold, or acquire, lease or sell UK property.



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This legislation has been introduced to provide greater transparency over the offshore entities owning property in the UK and to make it more difficult for criminals to launder money through UK real estate by hiding behind opaque offshore companies. These new rules now require overseas entities to register their beneficial owners and/or managing officer(s) before any property transactions can be performed. The registration process is set out in the figure below.

As is common with new legislation, these entities were given a grace period to process their registration - but this six-month period, since introduction of the Act is about to end. From 31 January 2023 the final stages of the legislation will become fully effective, necessitating all overseas entities who already owned UK property (Relevant Property see below) before 01 August 2022 to register with Companies House.

Any such entity that has been involved in a UK property transaction since the introduction of the new registration rules should already have complied to obtain their Overseas Entity ID (OE ID) for their transaction(s) to be registered with HM Land Registry - with the land registration elements of the Act coming into force from 05 September 2022 (Schedule 4A), allowing overseas entities requiring an OE ID (i.e. engaged in transactions) a five-week period following creation of the register to comply.

Without the appropriate OE ID in place, the Act will prohibit NRLs from transferring, leasing, or charging (i.e. obtaining a secured loan against the property) their land. It is now a criminal offence for an overseas entity which owns any relevant property, and all officers (directors) of that entity in default, to fail to make an application to register the details of their beneficial owner(s) on the Companies House Register of Overseas Entities by 31 January 2023.

Relevant property for the Register of Overseas Entities regime applies to:

- a freehold estate, or
- a lease granted for a term of more than seven years.

For properties in England & Wales acquired on or after 01 January 1999. Scotland & Northern Ireland have slightly varied criteria.

For the purposes of the register, the Republic of Ireland is an overseas jurisdiction.

There are exemptions in certain situations where an individual or legal entity may not have to register under the Act.

All new property transactions entered into by overseas entities that have not previously been required to register will need to ensure that they obtain their OE ID in good time, before any new transactions - involving a major land interest - can be completed.

Registered entities will also have an 'updating duty' requiring an annual update to the registrar including statements of changes to their beneficial owner(s), compliance and verification within the update period - beginning 12 months following the date of the overseas entity registration and every 12-month period beginning on the day following the previous period.

There is a wealth of property tax reliefs potentially available for those owning or investing UK property, including notably Capital Allowances on the purchase of commercial property. It is important to ensure that Capital Allowances claims are thought about at the earliest available opportunity within a transaction, as legislative requirements (New Fixtures Rules) introduced in 2012 and 2014 necessitate a clear understanding of the vendor's position - which is far easier to obtain during the transaction due diligence than after the fact - when vendors typically become disinterested and less helpful, if there are not contractual obligations in place to manage any information flows or co-operation. Capital Allowances can generate significant tax savings and more favourable cash flow following large investments, with allowances often between 20% and 40% of the purchase price, depending upon the nature and specification of the property.

For those entities committing to development expenditure further to their purchase, they may also be able to make a further claim for Capital Allowances on the construction, refurbishment, extension and/or fitting out of their UK property. Additionally, after changes in 2020, that brought NRLs into the scope of UK Corporation Tax - they are now also entitled to make a claim for Land Remediation Tax Relief on addressing polluted, or long-term derelict land - available on up to 150% of any qualifying land remediation expenditure incurred.

Whilst there are a number of property tax opportunities for overseas UK real estate investors, please note that where the required OE ID for an overseas entity has not been applied for, this may restrict the entitlement to claim property tax reliefs when the relevant interest in land requirements cannot be satisfied - thus the entity does not own the asset for tax purposes and therefore cannot claim relief.

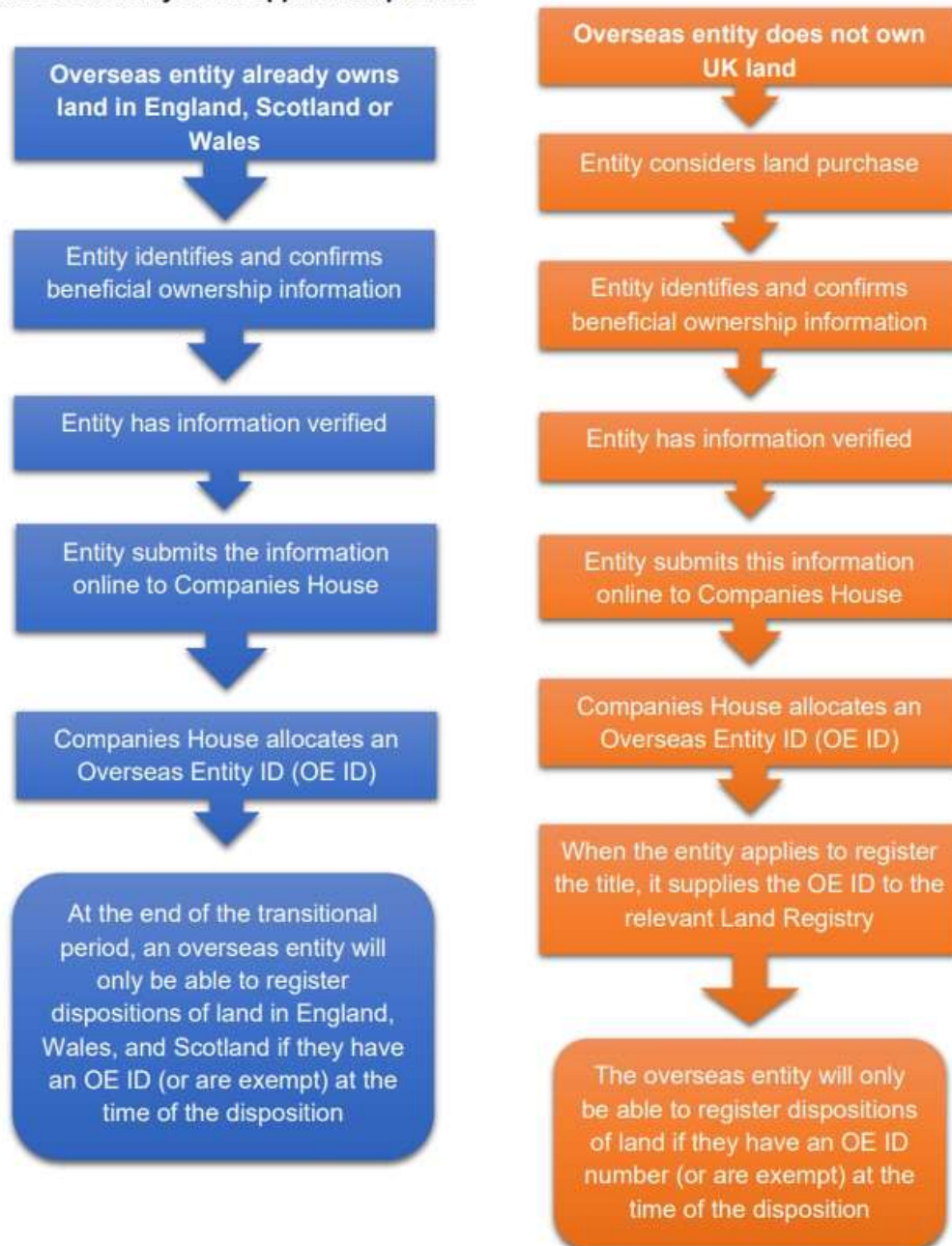
Please contact the team on 0345 230 6450 or hello@e3consulting.co.uk with any queries or to seek our assistance with your property tax matters. We look forward to speaking with you soon.

ALUN K OLIVER BSc(Hons) MCIM MBA FRICS is Managing Director of Property Taxation Specialists, E³ Consulting, and is also a CEDR accredited mediator. E³ Consulting advises a wide range of clients across the UK from FTSE100 through to regional developers and family offices on Capital Allowances, Community Infrastructure Levy (CIL), Land Remediation Tax Relief, VAT and Repairs & Maintenance throughout the UK.

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Figure 3: Summary of the application process



Source: Guidance for the Registration of Overseas Entities on the UK Register of Overseas Entities (Technical guidance for registration and Verification) - Department for Business, Energy & Industrial Strategy - Downloaded: 19 January 2023.