Capital gains tax for non-residents: the Government's consultation

On 27 November 2014, the UK Government published its response to the consultation on the proposed extension of capital gains tax (CGT) to non-resident owners of UK residential property. Within the proposals are some significant changes to principal private residence relief. The changes are expected to come into force from 6 April 2015 and there is no minimum threshold.

Who will be affected and what will be specifically excluded from the charge?

The proposed new rules seek to tax non-UK resident individuals, companies, trusts and partnerships on capital gains accruing on UK residential property.

Residential property for this purpose is, broadly, property which is used, or has the potential to be used, as a dwelling. This includes property that is in the process of being constructed or adapted for residential use (though not land on which a dwelling may be built). Particular types of residential property such as boarding schools, purpose built student accommodation and care homes will be exempt.

The Government has stated that it wants to continue to encourage large-scale institutional investment in the development and supply of housing and so the rules will not target ‘qualified institutional investors’ and other diversely held investment vehicles. However, ‘narrowly controlled companies’ (broadly those controlled by five or fewer persons) will be within the charge. In considering whether a company is a ‘narrowly controlled company’ each cell in a protected cell company must be considered separately and the interests of closely related family members must be aggregated.

The exemptions introduced for the annual tax on enveloped dwellings (ATED) and the ATED-related CGT charge (eg. property rental businesses, properties used in a business) will not apply for these purposes.
Interaction with ATED and other taxes

ATED and ATED related CGT were introduced from April 2013 and apply to 'non-natural persons', (broadly corporates or partnerships with one or more corporate partners) holding high value residential property. Where the ATED-related CGT charge is in point, this will apply in priority to the CGT for non-residents and at a higher rate of 28%. Where a property qualifies for one of the available reliefs, and is exempt from ATED-related CGT, the CGT for non-residents will be applicable. In some cases, where properties move in and out of qualifying for ATED relief, tax may be due under both ATED related CGT and the broader charge (but there should be no double taxation).

The new CGT charge will apply in priority to the existing anti-avoidance legislation attributing gains in non-resident companies to UK resident members, as well as the extensive CGT anti-avoidance legislation in place for non-UK resident trusts (which attributes gains to settlors and beneficiaries of non-UK resident trusts).

Rate of tax

The Government has stated that the intended purpose of the proposed rules is to ensure fairness between UK residents and non-UK residents.

It is, therefore, proposed that non-resident individuals holding the UK residential property in their own name will be subject to CGT at the same rate as UK residents (currently 18% and 28%), with the annual exempt amount being available.

In line with the treatment of UK trusts, non-UK resident trusts will be subject to CGT at 28% with the annual exempt amount being half that for individuals.

Non-UK resident companies (who are not trading in the UK) will be subject to CGT at corporate tax rates (20% from 1 April 2015). It is worth noting the differential between the company rate and the higher rate for individuals as well as with the rate of ATED-related CGT.

Gains in partnerships will be taxed on the members of the partnerships, as with UK partnerships and tax will be paid at the rate appropriate to the individual, corporate or trust member.

Calculating the chargeable amount

The charge will only apply on gains realised on or after 6 April 2015 and only post-6 April 2015 gains will be taxable. The Consultation Response Document states that the ‘default’ position would be to rebase the UK residential property to its market value at 6 April 2015. However, there will be two further options available to taxpayers:

► Time apportion the whole gain over the whole period of ownership (with just the proportion relating to the period post 5 April 2015 being subject to tax). This option is not available where the gain is also subject to ATED related CGT.

► Compute the gain or loss over the whole period of ownership.

It is not clear whether there will be further restrictions on these additional options (for example where one method will give rise to a larger loss than another).

We envisage that the availability of these three options may be beneficial in some circumstances, but that the taxpayer may need to undertake a substantial amount of analysis to be able to determine the best option for them. It appears though that there
will be no requirement to elect which option the taxpayer will choose prior to the disposal.

Losses

Losses on the disposal of UK residential property will be ring-fenced for use against gains arising to the same person on other UK residential properties in the year. Where they cannot be offset in the year they can be carried forward to be offset against such gains in future years.

Proposed changes to principal private residence relief

The Government also proposes significant changes to principal private residence (PPR) relief. These changes will apply to UK residents and non-residents alike.

The circumstances in which a person's PPR can be situated in a country in which they are not tax resident will be restricted.

From April 2015 a person's residential property will not be eligible to be treated as their PPR for a tax year unless:

- The person making the disposal was tax resident in the country where the property is located, or
- The person met the new '90-day rule' for a property in a jurisdiction where they are not tax resident.

To meet the 90-day rule a person must have spent 90 midnights in that property or, if they have more than one property in that jurisdiction, they must have spent 90 midnights across all the properties. For married couples (and civil partners) occupation by one spouse will be regarded as occupation by the other.

PPR relief (as modified) will continue to be available to non-resident trusts where a beneficiary meets the PPR requirements.

Reporting the disposal and paying the tax

The exact details of how gains will be reported and tax paid are still being finalised. However, it is envisaged that all non-UK residents disposing of UK residential property will have to notify HMRC within 30 days of the conveyancing of that property. Those with a live self-assessment record will be able to include the gain on their self-assessment tax return, filing and paying the tax due by the usual due date (31 January following the end of the tax year for individuals and trustees).

Those without a live self-assessment record will be required to deliver a return and make a payment within 30 days. It is not currently clear whether the tax due after 30 days will be at normal rates on the capital gain only, but it does appear that this will be the case. Amendments can be made to the returns for 12 months following the normal self-assessment deadline for the tax year in which it was made.
How EY can help

We expect further detail and guidance to be published before April 2015. As the details of the proposed legislation are published we can help you understand how you will be affected. If you are considering buying UK residential property or changing your property holding structure, we can advise on the tax implications of any such transactions.

We can also assist by providing property valuations of your residential property dated at 6 April 2015, and if you are considering selling the property, we can help you determine which of the calculation options are appropriate for you.

Further information

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