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Capital Gains Tax For Non-UK Residents – Consultation Is Here!

What is the Plan?

The Government has now published its promised consultation document on the introduction of CGT on gains made by non-residents disposing of UK residential property. At present, individuals, companies and trusts not resident in the UK for tax purposes are outside the scope of CGT so that their investment gains are not taxed (except in circumstances where specific anti-avoidance provisions apply). From April 2013, residential properties for personal use worth more than £2m have been within the scope of CGT if owned by certain non-natural persons (or NNPs).

The UK Government released a consultation document on 28 March 2014 on a wider extension of CGT on UK residential properties to all non-UK residents intended to take effect from April 2015. The consultation period closes on 20 June 2014.

What is it relevant to?

The proposed CGT charge will relate to all UK residential properties (i.e. dwellings used or suitable for use as a dwelling), regardless of value whether or not they are properties used by connected individuals or are subject to property rental businesses. This includes property that is in the process of being constructed or adapted for residential use.

While the introduction of the charge generally brings the UK into line with many other countries which charge CGT on non-residents holding property in their jurisdictions this is a major change in the UK.

Who will be chargeable?

The measures are intended to apply to non-UK resident individuals, non-UK resident partners, non-UK resident companies and all types of non-UK resident trusts.

Who will not be chargeable?

Funds meeting a new genuine 'diversity of ownership' test could be excluded, but the position will be considered further as part of the consultation. Pension funds will be excluded from the regime. Foreign Real Estate Investment Trusts (REITs) will also be excluded.

There is no proposal to include the sale of the shares in companies that own UK residential property within the scope of the charge. There is no proposal to either extend the CGT to non-UK residents holding commercial properties in the UK.

What about exemptions?

The Government does not intend to tax most forms of residential property that is primarily for communal use, such as boarding schools and nursing homes. It is generally proposed that the scope of the exemption is restricted and in particular will not extend to the 'genuine businesses' that were excluded from the ATED charge. In addition, disposals of multiple dwellings in a single transaction would not be excluded from the CGT charge, despite beneficial treatment under the SDLT regime.

Will Principal Private Residence (PPR) relief apply?

The consultation suggests that it will be necessary to make changes to the current legislation relating to PPR relief. This broadly provides up to 100% relief from CGT where an individual disposes of a property that was their only or main home.

The current legislation generally allows an individual with more than one residential property to elect which one should be treated as their PPR. Where an election is not made, the PPR of the individual is determined by the facts and circumstances of their living arrangements. The consultation document makes it clear that non-UK residents will be able to claim PPR, but it is likely the rules will be changed to prevent abuse by non-residents who could elect to treat their UK property as their PPR, thus obtaining relief from UK CGT, whilst at the same time owning a non-UK property which would also be outside the scope of UK CGT.

We expect that any changes to the PPR rules will also apply to UK residents and are therefore expected to be significant.

What rate will apply?

Individual non-UK resident taxpayers will pay CGT at the same rate as UK residents – a maximum rate of 28% (an 18% rate applies for basic rate tax payers) and non-UK resident individuals will also be entitled to receive the same annual CGT allowance (£10,900 for tax year 2013 – 2014) as UK residents.

Companies owning UK residential property will not be brought within the general charge to Corporation Tax (charged at a maximum rate of 21% from 6 April 2014) in respect of that property, but a specific tailored approach within CGT will be applied to them, at a rate of tax to be announced. Companies (UK resident or otherwise) already subject to the ATED – related CGT charge are taxed at 28%, but benefit from an indexation allowance.

How will it be enforced?

The Government indicate a withholding tax will need to be applied in the UK to ensure compliance (although they would prefer to operate this together with an option to self-report.). It is proposed this would require the actual tax due to be paid by the seller within 30 days to avoid the withholding which would presumably be applied to the gross sales proceeds. This will undoubtedly make the conveyancing process more complex and increase costs.

What is still to be ascertained?

The charge is intended to come into effect in 2015 and will apply only to gains arising from that date. There is no reference to a rebasing of property values as at that date for the purposes of the new charge and it remains to be seen whether “arising from that date” refers to all gains on disposals from April 2015, or only gains accrued from April 2015. Informal discussions with HMRC indicate they may be prepared to consider a rebasing but no specific confirmation is available at present on this.

It is not clear either how the proposals will interact with the ATED – related CGT charge or existing anti-avoidance legislation.

What action should be taken?

As indicated above, the consultation is open until 20 June 2014 and a considered response and draft legislation is unlikely to be published before the Autumn Statement in December 2014. Whilst no immediate action is required, all non-UK resident owners of residential property, other than widely held funds, should prepare to pay CGT on a disposal after 2015 or plan to restructure.

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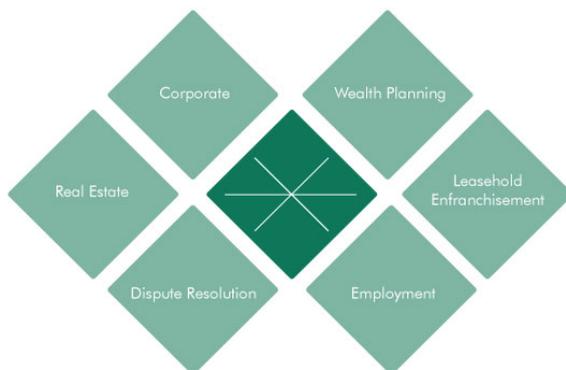
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