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Implementation of a Capital Gains Tax Charge on Non-Residents

Government announced in the Autumn Statement 2013 that it would extend Capital Gains Tax (“CGT”) to disposals of UK residential property by non-residents from April 2015. The purpose of this proposal was to address a perceived unfairness within the CGT and the Property Tax regime whereby UK residents are charged CGT when disposing of a property that is not their main residence but non-residents are not. Government has carried out a consultation process and the findings of their consultation have recently been published. Whilst we await the legislation implementing this proposal, Government outlined the key features of the proposed legislation.

The scope of the CGT charge

The new CGT charge will be limited to the disposals of UK residential property only. There will be no change in the tax treatment of disposals of trading stock, which will be subject to tax on profits as is currently the case. Residential property will be defined as property suitable for use as a dwelling, and communal residential property will generally be excluded from the charge.

Who will be subject to the charge?

The charge will apply to non-resident individuals, non-resident trustees, personal representatives of a non-resident deceased person and some non-resident companies disposing of UK residential property. There was concern that large-scale institutional investors supporting much needed development in the UK would be caught by the proposed legislation, however Government is seeking to introduce a “narrowly controlled company test” along with a “genuine diversity of ownership test”. This should ensure that non-resident individuals and closely connected parties who make disposals of UK residential property will be subject to the CGT charge but most institutional investors will not.

What rates of tax will be applied?

Tax will be charged at varying rates depending on whether or not it is an individual, trust or company. Companies will pay CGT at 20% in line with Corporation Tax rates in the UK and indexation relief will be available. Trustees will be subject to CGT at 28% and individuals will be subject to CGT at the rate of 18% or 28% depending on the person’s total UK source income and chargeable gains. The annual exemption will also be available for individuals.

Interaction with ATED related CGT

In order to simplify matters, it was argued that ATED-related CGT should be removed altogether and the extended CGT charge should simply take its place. However, Government has chosen to continue with the ATED-related CGT regime and to the extent that a gain is ATED related then companies will continue to pay ATED-related CGT at a rate of 28% in priority to the extended CGT charge. Where a gain is not subject to ATED-related CGT, then the extended CGT charge will bite. An example of this scenario would be where a non-resident company enjoys one of the prescribed reliefs from ATED-related CGT, such as a rental business; with effect from 6 April 2015 such a non-resident company will be subject to CGT on a disposal of the property even though ATED-related CGT would not apply. Conversely, a non-resident company which owns a property occupied by a person connected with the structure will continue to pay ATED-related CGT on disposal.

Rebasing

Rebasing will be available as at the market value on 6 April 2015, so that any gains accruing before this date will fall outside of the new charge. As an alternative taxpayers will have the option to apportion the gain over the whole period of ownership instead of rebasing. Taxpayers will also be able to elect for the entire gain or possibly losses to be calculated without any reference to rebasing or apportionment. Consideration will need to be given to each situation before determining the most appropriate way to apportion the gains.

Principal Private Residence Relief

It will still be possible to claim principal private residence relief ("PPR"), however this will be limited in its availability with effect from 6 April 2015. The individual will need to be either tax resident in the country in which the property is situated or will need to have spent at least 90 days in the property in the relevant year for which the relief is claimed. Where trustees are in ownership of properties then PPR will be restricted to those situations where the beneficiary in occupation meets the 90 day rule as described above.

Reporting the CGT liability

HMRC will need to be notified within 30 days of a disposal for CGT purposes. There will be a requirement to notify HMRC even in the event that a loss has occurred, or if the gains are covered by an individual's annual exempt amount. The notification will also be the method by which a PPR nomination is made.

A different set of rules will apply depending on whether there is an existing relationship with HMRC. Where there is an existing relationship and there is a CGT liability as a consequence of a disposal then the relevant person will have to deliver their self-assessment return after the end of the tax year and make any payments due within the usual self-assessment timescales.

If there is no established relationship with HMRC then the relevant person will be required to deliver a return within 30 days and make a payment at the same time.

If you have any questions regarding the changes to the CGT regime or you have any concerns as to how this may impact on your personal circumstances, Rooks Rider Solicitors LLP has a team of specialists able to advise you.

For further information or to discuss any of the issues raised in this briefing note, please contact a member of the Rooks Rider Solicitors' team:



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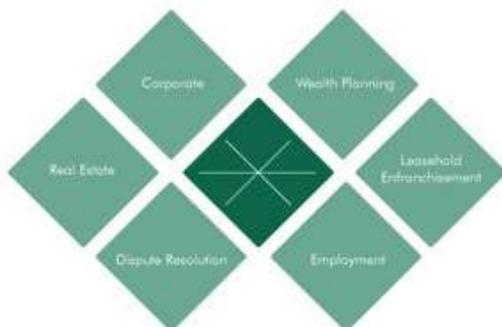
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