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Capital Gains Tax for non-UK residents

In the 2013 Autumn Statement, the Government introduced a proposal for new rules under which the scope of capital gains tax (CGT) would be extended to apply to non-residents disposing of UK residential property.

This represents a significant change to the CGT regime as, previously, CGT has not applied to non residents (other than through the ATED regime and those non-resident companies carrying on a trade in the UK). However, following the introduction of ATED and the ATED-related CGT charge in respect of UK residential property held through a corporate structure, these new measures are perhaps not quite as much of a surprise as they once might have been.

HM Revenue & Customs (HMRC) states that the reason for the extension of the CGT charge is to address imbalances between the treatment of UK residents and non-UK residents who hold UK residential property, and to harmonise the UK system with the various other jurisdictions who charge CGT on the basis of where the property is located rather than where the owner is resident.

Consultation

A consultation document was issued by HMRC recently setting out further details of what is proposed. HMRC has asked for views and responses to specific questions raised, which are to be submitted by the end of June. HMRC is likely to publish its response to the comments and revisions to the proposals (if any) in the Autumn.

Further consultation may take place after that depending on what comes out of the responses to the consultation document, but final legislation is to take effect from 6 April 2015.

Main Proposals

The consultation document sets out the main proposals as follows:

- The charge will apply to UK residential property and to property that has the potential to be used as a residence. This includes property which is currently being built or adapted to be used for residential purposes.
- The charge will apply to rental properties as well as properties which are not part of a property rental business. This is in contrast with the ATED-related CGT charge, where residential rental property held as part of a genuine business is exempt.
- Residential property which is used on a communal basis like care homes, school boarding houses, military accommodation, and student halls of residence which are attached to an institution, are to be exempt from the new CGT charge, although student accommodation in general will not be excluded from the charge.
- The charge will apply to non-resident individuals who hold UK residential property directly or via a partnership, and non-UK resident trusts.

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- UK property held through UK or foreign UK equivalent REITs will not be caught by the extended charge. However, other collective investment schemes through which non-UK residents hold UK residential property will need to meet a Genuine Diversity of Ownership (GDO) test in order to be exempted from the extended CGT charge.
- Pension funds are excluded from the extended charge.
- It is proposed that all UK residential property owned by non-UK resident companies will be subject to the extended CGT charge. This will be separate and distinct from the ATED-related CGT charge which presently applies to properties worth £2 million or more held in non-UK corporate envelopes, and which will be extended from April 2015 to enveloped properties worth £1 million and from April 2016 to enveloped properties worth £500,000. Both charges will be operated alongside each other, apparently so that the ATED related CGT charge will apply to corporate envelopes which hold UK residential property and attract the ATED income tax charge, and the extended CGT charge will apply to those UK residential properties in a non-UK corporate structure which are not caught by the ATED charge.
- For individuals, the extended CGT charge will apply at 18% for basic rate taxpayers and at 28% for higher and additional rate taxpayers. The applicable rate will be determined based on the non-UK resident individual's UK income levels for the relevant tax year. The benefit of the CGT annual exemption (currently £11,000) will be available to offset against gains caught by the extended charge.
- Rates of tax to be applied to gains of trustees, some types of property holding funds and companies are to be determined at a later date.
- The consultation document also mentions the possibility that the opportunity to make an election may be replaced with a fixed rule to identify an individual's main residence.
- Systems for paying and reporting tax due are under consideration.
- As set out in the consultation document, the new charge will apply to gains in relation to UK residential properties after 5 April 2015 but the mechanism for achieving this is yet to be decided.

These new proposals may represent the start of a changing landscape for non-resident individuals as far as CGT is concerned. It may only be a matter of time before the charge to CGT is extended to gains arising on the sale of other UK situs assets held by non-resident individuals. Watch this space!

Specific advice should be obtained before taking action, or refraining from taking action, on any of the subjects covered

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