HM Treasury

HM Revenue & Customs

# Implementing a capital gains tax charge on non-residents:

## consultation

March 2014

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# Foreword

*The Autumn Statement announced an important change to improve the fairness of the UK tax system – the extension of capital gains tax to non-residents disposing of UK residential property.*

*Britain is an open country that welcomes investment from all over the world, including investment in our residential property. Foreign investments can help support the development of new homes through providing crucial financing, and often contribute to increases in the rental stock.*

*However, the government does not believe that it is right that UK residents pay capital gains tax when they sell a home that is not their primary residence, while non-residents do not. Similarly, we do not believe that it is right that UK companies are subject to tax on gains that they make from disposals of residential property, whereas non-residents are not. It is important for the integrity of our tax system that when gains are made from UK residential property, UK tax is paid.*

*This consultation document outlines the proposed design for the extension of capital gains tax to address the current imbalance between the treatment of UK and non-UK residents disposing of UK residential property. This measure will bring the UK into line with many other countries that already charge capital gains tax on the basis of the location of the residential property rather than the location of the seller.*

*The government recognises that this change is not straightforward to introduce. For this reason, the charge will apply from April 2015, and only to gains arising from that date. We will ensure, as far as possible, that the extended CGT charge is fair and sustainable, without imposing unnecessary or intrusive burdens on non-residents.*

*This consultation seeks views on the proposed design of the charge. It is an opportunity for stakeholders to feed in their views to ensure that the policy change works effectively to achieve its objectives. The government welcomes responses and engagement in the consultation process from all interested parties.*

David Gauke
Exchequer Secretary to the Treasury

# 1 Introduction

1.1 At Autumn Statement 2013 the government announced that it will charge capital gains tax (CGT) on gains made by non-residents disposing of UK residential property, from April 2015. The charge will come into effect in April 2015 and apply only to gains arising from that date.

1.2 Unlike other countries that collect tax on gains relating to disposals of residential property located within their jurisdiction, the UK does not generally charge CGT on disposals by non-residents. This means that any gain made by a non-resident individual on UK residential property is either taxed in the individual's country of residence, or not taxed at all. In contrast, UK resident individuals are subject to CGT on disposals of any residential property that is not their primary residence, including on the gains made on any residential property they own abroad. The taxation of gains made on residential property that is owned in other ways by UK persons – through trusts, companies and funds – is either subject to UK CGT, or UK corporation tax (CT), depending on the nature of the investment and the structure involved.

1.3 The government believes that this situation is unfair and has decided to rectify it so that, going forward, non-residents making gains on UK residential property will be subject to UK CGT in a comparable way to UK residents. The government recognises that non-residents hold UK property through various structures and for various purposes. Charging non-residents on the gains that they make on UK residential property is a significant change for the UK CGT regime and the government is keen to consult on how best to introduce this over the course of this year, to refine the initial design.

1.4 This consultation sets out the government's proposed approach to introducing the charge on non-residents disposing of UK residential property, and seeks views on the proposed design and the likely impact. Following this consultation, the government will confirm the scope and structure of the new regime, and may hold a further consultation on some more detailed and technical aspects of the design of the CGT charge.

1.5 The overarching objectives that the government will seek to achieve through the extended CGT regime are set out in Box 1.A. The government will consider all aspects of the new regime against these objectives.

**Box 1.A: Overarching objectives for the capital gains tax charge on non-residents disposing of UK residential property**

- Fairness: the primary aim of the new regime is to ensure that the tax treatment of non-residents that own and make gains on UK residential property is comparable to that of UK residents.
- Sustainability: the new regime will be introduced in a way that can be maintained without risk of significant abuse going forwards.
- Simplicity: the new regime will be introduced in a way that minimises complexity as far as possible.

In practice, the government will need to balance these different objectives against each other in deciding on the appropriate design for the extended capital gains tax regime.

1.6 Chapter 2 sets out the proposed scope of the regime, explaining that property used as a dwelling will be the focus of the extended CGT charge, with exceptions for some types of residential property. The chapter also discusses how the charge may apply to other ways that individuals or other entities can own and dispose of UK residential property, including partnerships, trusts, funds and companies – suggesting exemptions for pension funds and other funds with genuine diversity of ownership.

1.7 Chapter 3 sets out the proposed delivery features of the regime, discussing allowances, rates of tax, and the mechanism for collection. The chapter explains the changes that will be necessary to private residence relief for disposals of a main residence; that the rate of tax charged will mirror the rate of tax on UK individuals; and that, in order to ensure compliance, the government intends to introduce a new withholding tax at the point of a property transaction.

1.8 The proposals in this document are at stage 2 (determining the best option and developing a framework for implementation including detailed policy design) of the government's tax consultation framework. Officials will hold working groups over the consultation period, to discuss the issues set out in this document.

1.9 The government welcomes stakeholder views on the questions raised in this document. To express interest in attending the working groups or to respond to the consultation questions, please send comments to capitalgains.taxteam@hmrc.gsi.gov.uk, with the subject heading "Consultation on non-residents". Please send comments in response to the consultation questions by 20 June 2014. Wherever possible, please provide evidence to support your answer.

# 2 Key design features: who and what is in scope

2.1 The Autumn Statement announced that the new capital gains tax (CGT) charge will apply to non-residents disposing of UK residential property. This chapter discusses the scope of the regime, including the definition of residential property and different forms of property ownership.

2.2 The government will consider how best to define the scope of the regime in a way that builds on existing approaches for stamp duty land tax (SDLT) and the annual tax on enveloped dwellings (ATED). However, it will not always be appropriate to mirror existing definitions for the purpose of the extended CGT regime.

## What is meant by residential property

2.3 The government intends to focus the extended CGT charge on **property used or suitable for use as a dwelling i.e. a place that currently is, or has the potential to be, used as a residence.** This will include property that is in the process of being constructed or adapted for such use, in line with the definition in the ATED regime (although, where residential property is developed as part of a business, normal considerations will first be given as to whether any gains should be properly taxed to income or profit, rather than to CGT). The government does not intend to change the tax treatment for property, such as office and industrial buildings, which cannot be used as and are not in the course of being converted to a place to live.

2.4 However, it would not be right to exclude all disposals of property used for commercial purposes, for example residential property used to generate income from letting. UK residents pay CGT when they sell a home that is not their main residence, including residential property that they have bought for rental purposes. **The government believes that it would be unfair to charge CGT on residential property disposed of by a UK person who has the property as a second home, and not to do likewise when an equivalent residential property is disposed of by a non-resident landlord. The government also believes that gains made on disposals of residential property used as an investment should be subject to CGT.**

2.5 In this respect, the CGT charge on non-residents will differ from the approach the government has introduced for enveloped property where ATED and the ATED-related CGT charge[1] do not apply to property rental businesses. For the measures introduced as part of the ATED regime, it was appropriate to exclude genuine businesses from the scope of the charge, as the main focus was the avoidance of SDLT through holding property in corporate envelopes.

### Residential property with communal use

2.6 The government wants to ensure that residential property that is primarily for communal use, such as boarding schools and nursing homes, is not affected by the extension to CGT. The government will build on existing definitions in legislation for property tax to ensure that this type of property use is excluded from the scope of the charge, although with some adjustments.

[1] The ATED-related CGT charge is an extension to CGT introduced from April 2013 as part of the anti-avoidance package targeting high value residential properties bought through an envelope.

Unlike SDLT and ATED, the government does not propose that residential accommodation for students should be excluded from scope of the regime, except as part of a hall of residence attached to an institution. Box 2.A summarises the proposed exclusions.

**Box 2.A: Proposed exclusions**

- **accommodation for children and students:** use as a home or other institution providing residential accommodation for children; residential accommodation for school pupils; or as a hall of residence for students in further or higher education
- **accommodation to provide care:** use as a home or other institution providing residential accommodation with personal care for persons in need of personal care and nursing by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder; a hospital or hospice
- **other communal accommodation:** use as communal residential accommodation for members of the armed forces; other institutions that are the sole or main residence of at least 90% of its residents; and prisons or similar establishments

2.7 The SDLT and ATED regimes use slightly different versions of these definitions to exclude most communal or institutional property from tax on residential dwellings. The government proposes that for the extension of CGT, all of the groups set out above are excluded from the charge. **The government does not believe that disposals of multiple dwellings in a single transaction should be excluded from the CGT charge**, unlike treatment in the SDLT regime where a transaction involving six or more separate dwellings is currently treated as a non-residential land transaction, capping the SDLT rate at 4%.

**Question 1: Would an exclusion of communal residential property from the scope of the new regime result in any unintended consequences?**

**Question 2: Are there any other types of communal residential property that should be excluded from scope?**

## Different forms of residential property ownership

2.8 The government believes that it is right that non-residents making gains on UK residential property should be subject to UK tax on those gains. However, many alternative forms of property ownership are open to non-resident individuals who do not want to own their UK residential property directly. **Therefore, the government is considering charging gains made on disposals of UK residential property through different forms of non-resident entity, as well as disposals made by non-resident individuals** who own and dispose of UK residential property that they own directly. This section of the chapter considers the main forms of ownership. For comparison, a summary of current treatment is at Table 2.A.

### Ownership through partnerships and trusts

2.9 It is relatively common to own property in partnership with others or hold the beneficial interest of property held in trust. Property owned by partnerships is transparent for tax purposes. This means that any chargeable gain on the disposal of the property results in a CGT charge on each UK resident partner individually, reflecting the extent that they are entitled to those gains. **The government believes that this approach for apportioning partnership chargeable gains**

**should stay in place, so non-resident persons who are partners will be taxable under the new CGT regime to the extent that gains are attributable to them.**

2.10 Trustees are collectively subject to CGT as a single person (distinct from the persons who are trustees from time to time) on gains realised on the disposal of trust assets when they are regarded as resident in the UK. This happens, broadly, when either all the trustees are resident in the UK; or when some (but not all) of the trustees are resident in the UK and the settlor was UK resident or UK domiciled at the time the trust was established. To ensure comparable treatment between trustees that are regarded as UK resident and those that are not, the government believes that trustees that are not regarded as UK resident should be subject to CGT on the gains that they make on disposals of UK residential property. If they were not included in the scope of the charge, this would create tax avoidance opportunities. The government will consider interactions with existing anti-avoidance provisions.

2.11 The government recognises that in some circumstances it may be common to own assets through trusts for cultural and historic reasons. However, given that the CGT charge on non-residents is primarily about a fair tax regime, **the government is minded to include all types of trust in scope, in the same way that all trusts with UK trustees are subject to UK CGT.**

**Question 3: Are there any particular circumstances where including non-resident partners in scope of the charge might lead to unintended consequences?**

**Question 4: Are there any particular circumstances where including non-resident trustees in scope of the charge might lead to unintended consequences?**

### Ownership through fund structures

2.12 Another way to own UK residential property is to buy shares or units in a collective investment scheme (CIS), for example a Property Authorised Investment Fund (PAIF). The fund managers of CIS and PAIFs look to secure income returns and gains on their investments on behalf of their investees, who own shares or units in the fund. Currently, these structures may invest in a mixture of commercial and residential property. The government believes that, ideally, gains made on UK residential property should be subject to UK tax, even where the investment has been made through a fund.

2.13 In most cases, funds are not directly subject to UK tax on gains made from disposals of residential property. This is because fund taxation is based on the principle that investors should be taxed as if they had invested in the underlying assets directly. UK residents are subject to CGT on the gains they make when disposing of shares held in these funds. There is an argument that, for fairness, non-resident individuals investing through funds should be in scope of the extended CGT regime. However, **the government does not intend to tax non-residents on disposals of shares or units in a fund.** The government recognises that in some cases funds manage investments for a wide group of people, and across a wide range of assets. It is likely to be extremely difficult to monitor and to target disposals of units of investment in residential property within a fund that holds multiple investments.

2.14 The government remains concerned however that excluding from charge all investment into UK residential property through funds could leave the regime susceptible to avoidance, for example where property is disposed of through a closely held structure. Although the government does not intend to charge CGT on disposals of shares by non-resident individuals, **the government believes that in some cases it would be appropriate to introduce a charge at fund level.**

2.15 Building on existing approaches used within the funds legislation, the government intends to introduce a genuine diversity of ownership (GDO) test to ensure that where funds are closely held they can be in scope of the charge. The **government believes that funds that satisfy a GDO requirement should be outside the scope of the extended charge.** The government expects that this test should ensure that most CIS are not affected by the charge, but also that small groups of connected people cannot use offshore fund structures to avoid the new charge.

2.16 In designing the GDO test, the government will build on the approach set out in the UK authorised funds legislation, and the offshore funds rules[2]. The government will consider the best way to introduce charges on those funds that do not meet the GDO test.

2.17 The government recognises that some funds may not pass a GDO test for particular reasons. The government may therefore also consider a further (second-stage) test if necessary, for example to ensure that where the vast majority of a fund's portfolio is not in residential property they are not affected by the charge.

2.18 The government also recognises that some funds are not subject to UK tax at all. Where this is the case, the government will mirror the treatment for non-resident funds. Therefore, **pension funds will be excluded from the scope of the regime.**

**Question 5: Is a genuine diversity of ownership (GDO) test an appropriate way to identify funds that should be excluded from the extended CGT regime, and to ensure that small groups of connected people cannot use offshore fund structures to avoid the charge?**

**Question 6: Are there any practical difficulties in implementing a GDO test?**

**Question 7: Is there a need for a further test in addition to a GDO? If so, what would this look like and how would it be policed?**

### Ownership through REITs

2.19 A Real Estate Investment Trust (REIT) is a tax-advantaged property investment company or group of companies that hold, manage and maintain real estate. REITs are exempt from corporation tax on property income. A number of other countries use a structure equivalent to UK REITs to support investment in the property sector.

2.20 The REIT regime was introduced in 2007 to 'improve the efficiency of both the commercial and residential property investment markets by providing liquid and publicly available investment vehicles'[3]. The government has recently announced significant changes to the REIT regime to make it more attractive for investors and to improve its functionality. These mainly cover major reforms to remove barriers to entry and investment in the REIT regime introduced in 2012, allowing REITs to invest in other REITs introduced in 2013, and changes to include REITs as "institutional investors" from April 2014.

2.21 For a company to become a UK REIT, it has to be principally a property rental business (i.e. make its money from renting out properties) and fulfil the qualifying criteria. One of the requirements is that UK REITs have to be diversely owned under the non-close company rule. This is to prevent a small group of people clubbing together to gain tax advantages. REITs must also distribute 90% of their property rental business profits to their shareholders every year in whose hands the distributions from the property rental business are taxed as income from property.

[2] Guidance on the current offshore funds GDO test is available at http://www.hmrc.gov.uk/manuals/ofmanual/ofm25200.htm

[3] *UK Real Estate Investment Trusts: a discussion paper*, March 2005.

2.22 Gains realised on disposals of assets used in the property rental business are not subject to tax at the REIT level[4]. The government does not want to create different treatment for equivalent non-resident structures that operate like UK REITs. REIT regimes are found in many OECD countries and HMRC are currently in the process of drafting the guidance on what constitutes a foreign-REIT equivalent. **Therefore, foreign REITs will not be taxable under the extended CGT regime where they are equivalent to UK REITs**.

2.23 Instead of tax on gains at the REIT level, shareholders are instead taxed to CGT on disposal of shares in a REIT. Non-resident shareholders in UK REITs, as well as foreign REITs, are currently outside the scope of UK CGT. As set out above, the government does not intend to charge CGT on non-residents disposing of shares. In addition, REITs must be diversely owned and have specific requirements to make and distribute income from investments. **Therefore, the government has decided that non-residents investing in UK residential property through UK REITs will not be affected by the extended CGT regime.**

## Ownership through other companies

2.24 It is also relatively common to own and invest in UK residential property through a company. UK companies that own property are generally taxed on their gains under the corporation tax system, with the exception of those who fall within the ATED-related CGT charge. The government believes that it is important to consider carefully the treatment of residential property disposals through companies in order to ensure that the extended CGT charge is fair and robust.

2.25 In many cases, for example where a residential property is held for rental purposes, there may be very little difference between an individual buy-to-let property owner and an individual who happens to rent out their property through a company. The government believes that it is fair that in these two equivalent cases, both disposals are subject to UK tax. The government also believes that it is important to ensure that the extended CGT regime is not susceptible to avoidance through corporate enveloping, in the same way that was has been seen in the avoidance of SDLT. This section of the chapter discusses the use of corporate envelopes to hold and dispose of residential property, and also property rental and investment businesses.

2.26 The ATED-related CGT charge was introduced to target structures where property was owned through a corporate envelope. These envelopes were often used to avoid paying SDLT. The government believes that ATED and the associated measures can discourage the use of corporate envelopes to invest in high value UK housing which is left empty or underused while avoiding paying tax. As announced at Budget 2014, the government has decided to introduce two new bands for the ATED charge, to bring properties worth £500,000 to £2 million into the charge. Properties valued at between £1 million and £2 million and held in corporate envelopes will be subject to ATED from April 2015, and the related CGT charge will also apply on disposal from April 2015. Properties valued at between £500,000 and £1 million and held in corporate envelopes will be subject to ATED from April 2016. These properties will also be subject to a related CGT charge on disposal from April 2016.

2.27 The government believes that with no further changes to the CGT regime, individuals may be incentivised to set up companies to hold lower value residential property to avoid the new CGT charge. Therefore **the government is minded to extend CGT to all UK residential property sold by non-resident corporate envelopes, so that all properties are within scope, including**

[4] These gains do not need to be distributed to shareholders, although when a REIT decides to distribute gains they are then treated in the same way as property income distributions and, depending on the type of recipient, a withholding tax may be applied.

**those valued below £500,000.** However, the government will ensure that the ATED-related CGT charge only applies to those properties that are also subject to the ATED-charges each year.

2.28 Under the ATED definitions, 'bona fide' businesses, such as property rental businesses are not in scope of the charges on holding and disposing of property owned through corporate envelopes. This could mean that a non-resident buy-to-let landlord facing a CGT charge on their UK residential property could set up a company in a tax efficient jurisdiction to avoid paying the tax. However, as set out above, the government believes that there is a strong fairness rationale for ensuring that property rental companies also pay UK tax on the gains that they make on UK residential property. Charging tax on these gains will also address incentives for non-resident individuals to incorporate their property.

2.29 The government recognises that non-resident property companies are already within the UK tax system paying corporation tax on their UK profits and gains, where they are operating a trade in the UK through a permanent establishment here. However, investing in residential property, including rental property, is not regarded as a trade and so gains or profits made on investments in UK residential property through a foreign company are not currently subject to UK tax. **The government is therefore considering options to bring some non-resident property investment companies into the UK tax system.**

2.30 The government appreciates that some ways of ensuring that non-resident companies making gains from disposals of UK residential property are subject to UK tax may be more complex than others. The government could make disposals of UK residential property subject to a UK CGT charge, but this could lead to a higher tax charge than UK resident companies within the UK corporation tax regime that have access to allowances and reliefs. The government could also bring non-resident companies into UK corporation tax, but access to different allowances and reliefs could be costly and undermine the corporation tax regime which offers those reliefs to companies with permanent establishment in the UK. The government does not intend to make any changes that would have undesirable consequences on UK companies already in scope of the UK tax system.

2.31 On balance, **the government is minded to introduce a tailored approach within CGT or corporation tax to charge gains made on disposals of UK residential property by non-resident companies.** This approach would place a charge only on gains made on disposals of UK residential property by non-resident companies. If this approach is introduced, the government intends to allow losses that non-resident companies incur on disposals of UK properties only.

2.32 In combination with the ATED-CGT charge this means that: corporate envelopes that are not genuine businesses disposing of UK residential property will be subject to the ATED-related CGT charge at 28%; and other companies disposing of UK residential property will be subject to the tailored charge. The government will confirm the rate of tax charged on disposals of UK residential property by non-resident companies at a later date.

**Question 8: What are the likely impacts of charging gains (and allowing losses) incurred on disposals of residential property by non-residential property companies that are not already operating a trade in the UK?**

**Question 9: Are there other approaches that you believe would be more appropriate to ensure that non-resident property investment and rental companies are subject to UK tax on the gains that they make on disposals of UK residential property?**

**Table 2.A: Different ways of owning property in the UK – current treatment**

| Form of ownership | Tax at the entity level | Tax on individual if UK resident | Tax on individual if non-resident |
|---|---|---|---|
| Direct ownership by individual | N/A | CGT on disposal of second home or rental property | No UK CGT |
| Trust | UK trustees pay CGT at 28% on the disposal of a beneficiary's second home or rental property | Anti-avoidance rules charge UK resident domiciled settlors to CGT on disposals by off-shore settlor interested trusts of the beneficiary's second home or rental property; and in other cases UK resident beneficiaries on capital payments | No UK CGT |
| Company | Corporation tax (UK company), no UK CGT (foreign company). Both subject to ATED-related CGT on £2m+ residential property | CGT on disposal of shares. Anti-avoidance rules attribute gains of off-shore companies to UK resident participators. | No UK CGT, although for non-resident landlords there is an income tax charge for property rental income |
| UK collective investment scheme | No corporation tax on gains, except for non-exempt unauthorised unit trusts and qualified investment schemes that fail the GDO test | Corporation tax or CGT on disposal of units (or on disposal of property if CIS is a partnership) | No UK CGT |
| Offshore collective investment scheme (e.g. JPUT) | No corporation tax or CGT (except ATED-related CGT on £2m+ residential property) | Corporation tax or CGT on disposal of units in a fund (or on disposal of property if CIS is a partnership) | No UK CGT |
| REIT | No corporation tax or CGT on disposal of UK property used in the property rental business (both UK and foreign REITs) | Shareholders in a REIT pay corporation tax or CGT on disposal of shares rather than property | No UK CGT, although there is a withholding tax as for rental income if capital gains are distributed |

# 3 Key design features: how the charge will be implemented

3.1 In order to implement the new capital gains tax charge on non-residents in a way that is fair and sustainable, the government will need to introduce a number of changes that apply across the UK CGT system.

## Private residence relief

3.2 Private residence relief (PRR) is intended to ensure that individuals do not have to pay CGT on gains that accrue during the time a property is used as their main residence. In general, a UK residence will not be the main residence of a non-resident and therefore the CGT exemption available under PRR will not be appropriate. However, the government recognises there may be exceptions to this general position and **will make PRR available to non-residents in certain circumstances**. For example, where a person emigrates from the UK and then sells what was their main residence, it is appropriate that PRR should be available for the time the property was used as their main residence.

3.3 Under the current system an individual with more than one residence can choose, for any given period, which of those properties they would like to qualify for PRR. They do this by notifying HMRC of their election. CGT is then due on gains relating to the other residences they own, irrespective of whether it is their main residence. Bringing non-residents into CGT without any changes could mean that non-residents invariably chose to nominate their UK residence as their main residence and obtain tax relief on gains made on that property, even where it was not in fact their main residence, yet not pay any UK CGT on gains relating to their other residences outside of the UK. This would undermine the extension of CGT to non-residents.

3.4 With this in mind, **the government is considering changing the election rules. In line with the current PRR process, taxpayers may be asked by HMRC to demonstrate their entitlement to relief and so may need to keep records for this purpose.** UK residents are already required to show, when asked by HMRC, that a residential property that they have disposed of qualifies for PRR, including that it was in fact used as their main residence or, if they have made an election, as a residence by them for the period covered by the election.

3.5 The government is considering two possible approaches, both of which involve changes to the process by which a person can benefit from PRR. The government may:

1. remove the ability for a person to elect which residence is their main residence for PRR. This would mean that PRR would be limited to that property which is demonstrably the person's main residence. The government envisages that this would build on the existing process that applies where an individual with two or more residences has not made an election. In these cases, the person's main residence is determined by the balance of all the evidence including factors such as the address where the taxpayer's spouse or family lives, mail is sent, and that is on the electoral roll.
2. replace the ability to elect with a fixed rule that identifies a person's main residence e.g. that in which the person has been present the most for any given tax year.

Depending on the test that is devised this may mean that taxpayers have to keep different or additional records.

3.6 The first option would allow some flexibility for different circumstances, but this could result in some uncertainty. The second option would be a definitive test, which would provide more certainty, but might offer less opportunity to deal with particular circumstances. There may be other variants on these options, for example allowing the current election process to be retained in some circumstances. The government is interested in learning about the potential impacts of these approaches and any variants of them, and how any difficult cases could be sensibly addressed.

3.7 **The government does not intend to make other changes to the related tax reliefs available by reference to a person's main property, for example absence reliefs where individuals need to be away from their main home for work or other reasons.** However, depending on the final approach, consequential changes to existing legislation may be required to ensure that they continue to work as intended.

**Question 10: Are there any particular circumstances where changing the PRR election rules might lead to unintended consequences?**

**Question 11: Which approach out of those set out in paragraph 3.5 do you believe is most suitable to ensure that PRR effectively provides tax relief on a person's main residence only?**

**Question 12: Are there any other approaches that you would recommend?**

## Rate of tax

3.8 The government's primary objective in designing the CGT charge on non-resident individuals is to ensure that the tax treatment of non-residents that own and make gains on UK residential property is comparable to that of UK residents. Therefore, the rate of tax charged must also be fair and comparable to the rates of tax charged on UK residents.

3.9 Individual UK taxpayers are subject to a 28% rate of CGT if they are higher-rate tax payers, and 18% if they are lower-rate tax payers. In calculating the rate of tax, total income is calculated first, and capital gains are added.[1] The annual exempt amount, currently £10,900, is available to all individual UK taxpayers. **The government intends that the annual exempt amount will also be available to non-resident individuals subject to UK capital gains tax.**

3.10 In extending CGT to non-residents, the government is considering how best to ensure that an equivalent rate of tax applies. For non-residents, their UK income will need to be declared to ensure that the appropriate level of tax is levied. **The rate of tax charged will then mirror the higher and lower-rates of tax for UK residents** so, on the basis of the current system, non-residents will be charged a rate of 18% or 28% on the gains that they make, depending on their total UK income and gains.

3.11 As set out in the next section of the submission, under a withholding tax mechanism, a tax charge based on the value of the property may be collected initially, and then offset against any additional tax due/owed. **The government will also ensure that this mechanism allows for the declaration of a loss where appropriate.**

[1] For example, Mr X earned £30,000 for the tax year 2013-14 and made chargeable gains of £50,000, which is reduced to £39,100 after the deduction of the annual exempt amount of £10,900. The basic rate band of £32,010 is allocated first to income (£30,000) and the balance to chargeable gains. So, the first £2,010 of chargeable gains is taxed at 18% (£362); the remaining £37,090 is taxed at 28% (£10,385). His total tax liability would be £10,747.

3.12 As discussed in Chapter 2, the government is considering bringing some types of funds and companies into scope of the UK tax regime, where they dispose of UK residential property. As part of considering the best way to do this, the government will assess the appropriate rate of tax to charge on gains made, ensuring that non-residents are treated comparably to UK residents. **The government will confirm the rates of tax to apply to gains made by other non-resident entities** at a later date.

## Delivery mechanism

3.13 Charging CGT on non-residents will bring in a new population to the UK tax system, and a population about which HMRC currently holds limited or no information. In order to ensure that the CGT charge is introduced in a way that is effective and sustainable, **the government believes that it will need to introduce a new delivery mechanism.**

3.14 It would be possible for the government to introduce an extension to the self-assessment process, with a bespoke form similar to that used for the ATED-related CGT charge, where non-residents report the charges due to HMRC. However, this process would rely on voluntary reporting and payment and it could be difficult to ensure compliance.

3.15 The government is minded to introduce a new process for the reporting and payment of CGT by non-residents who dispose of UK residential property. **The government's preference is to introduce a form of withholding tax that operates alongside an option to self-report the tax due.** Many other countries that operate separate tax regimes for income and capital gains tax, including Spain, Australia and Canada, also operate withholding taxes to ensure tax collection from non-residents.

3.16 The operation of the withholding tax could work as follows. The initial stage would be the identification that the seller of a residential property is a non-resident. The non-resident may then have an option to pay a withholding tax or to pay the actual tax due. There would then need to be some transfer of monies and reporting of the tax paid, to allow for any differences to be settled with HMRC. The government believes that it may be possible to do this in a similar way to the existing SDLT process, with agents transferring monies due within 30 days.

3.17 The government recognises that introducing a new withholding tax is a significant change, and one that will come with new administrative burdens for those involved in residential property transactions. However, the government's view is that this approach is both necessary and proportionate in ensuring that the capital gains tax regime is robust and sustainable. The government would like to develop this mechanism in consultation with agents and other stakeholders involved in residential property transactions, and will seek to minimise burdens where possible. The government would welcome views on the best way to introduce this mechanism.

3.18 The government will consider appropriate adjustments to this approach to account for the final approach to charge disposals made by non-resident companies.

**Question 13: Do you believe that solicitors, accountants or others should be responsible for the identification of the seller as non-resident, and the collection of the withholding tax? If not, please set out alternative mechanisms for collection.**

**Question 14: Are there ways that the withholding tax can be introduced so that it fits easily with other property transactions processes?**

**Question 15: Do you think that the government should offer the option of paying a withholding tax alongside an option to calculate the actual tax due on any gain made from disposal, within the same time scales as SDLT?**

**Question 16: Is it reasonable to ask non-residents to use self assessment or a variant form to submit final computations within 30 days? If not, what processes would be preferable?**

# 4 Summary of consultation questions

4.1 The full list of consultation questions is set out below. Wherever possible, please provide evidence to support your response.

**Question 1: Would an exclusion of communal property from the scope of the new regime result in any unintended consequences?**

**Question 2: Are there any other types of communal residential property that should be excluded from scope?**

**Question 3: Are there any particular circumstances where including non-resident partners in scope of the charge might lead to unintended consequences?**

**Question 4: Are there any particular circumstances where including non-resident trustees in scope of the charge might lead to unintended consequences?**

**Question 5: Is a genuine diversity of ownership (GDO) test an appropriate way to identify funds that should be excluded from the extended CGT regime, and to ensure that small groups of connected people cannot use offshore fund structures to avoid the charge?**

**Question 6: Are there any practical difficulties in implementing a GDO test?**

**Question 7: Is there a need for a further test in addition to a GDO? If so, what would this look like and how would it be policed?**

**Question 8: What are the likely impacts of charging gains (and allowing losses) incurred on disposals of residential property by non-residential property companies that are not already operating a trade in the UK?**

**Question 9: Are there other approaches that you believe would be more appropriate to ensure that non-resident property investment and rental companies are subject to UK tax on the gains that they make on disposals of UK residential property?**

**Question 10: Are there any particular circumstances where changing the PRR election rules might lead to unintended consequences?**

**Question 11: Which approach out of those set out in paragraph 3.5 do you believe is most suitable to ensure that PRR effectively provides tax relief on a person's main residence only?**

**Question 12: Are there any other approaches that you would recommend?**

**Question 13: Do you believe that solicitors, accountants or others should be responsible for the identification of the seller as non-resident, and the collection of the withholding tax?If not, please set out alternative mechanisms for collection.**

**Question 14: Are there ways that the withholding tax can be introduced so that it fits easily with other property transactions processes?**

**Question 15: Do you think that the government should offer the option of paying a withholding tax alongside an option to calculate the actual tax due on any gain made from disposal, within the same time scales as SDLT?**

**Question 16: Is it reasonable to ask non-residents to use self assessment or a variant form to submit final computations within 30 days? If not, what processes would be preferable?**

# 5 The consultation process

5.1 This consultation is being conducted in line with the Tax Consultation Framework. There are five stages to tax policy development:

- Stage 1 – Setting out objectives and identifying options
- Stage 2 – Determining the best option and developing a framework for implementation including detailed policy design
- Stage 3 – Drafting legislation to effect the proposed change
- Stage 4 – Implementing and monitoring the change
- Stage 5 – Reviewing and evaluating the change

5.2 This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

## How to respond

5.3 Respond by 20 June 2014.

5.4 A summary of the questions in this consultation is included at Chapter 4.

5.5 Responses should be sent by 20 June by email to: capitalgains.taxteam@hmrc.gsi.gov.uk, with the subject heading "Consultation on non-residents". Alternatively please send responses by post to Alan McGuinness, Specialist Personal Tax, Assets and Residence Policy, HM Revenue and Customs, 100 Parliament Street, London SW1A 2BQ; or to Sarah Adams, Enterprise and Property Tax, 1 Horse Guards Road, London SW1A 2HQ.

Telephone enquiries about the consultation can be made to Sarah Adams, HM Treasury (020 7270 5549) or Alan McGuinness, HM Revenue and Customs (03000 585256) (from a text phone prefix this number with 18001).

5.6 Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HM Treasury website. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

5.7 When responding please say if you are a business, individual or representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

## Confidentiality

5.8 Information provided in response to this consultation, including personal information, may be published on disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1988 (DPA) and the Environmental Information Regulations 2004.

5.9 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

5.10 HM Treasury will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation Principles

5.11 This consultation is being run in accordance with the government's Consultation Principles. Workshops will be held during the course of the consultation.

5.12 The Consultation Principles are available on the Cabinet Office website: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance.

5.13 If you have any comments or complaints about the consultation process please contact: Paul Miller, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance

Please do not send responses to the consultation to this address.

# A International comparisons

A.1 This annex provides details of the capital gains tax (CGT) treatment of non-residents in a selection of key comparator countries, through a series of individual country studies. The countries presented are the G8, excluding the UK, and some additional OECD countries.[1] Subject to data availability, the country sample was chosen on the basis that UK residents are likely to own property in these countries, and vice versa.

A.2 Subject to the availability and comparability of information, the main topics covered are the CGT treatment of non-residents compared to residents, whether the country avails of its primary taxing rights (and whether any relevant Double Taxation Agreement (DTA) exists), CGT rates and the collection mechanism used.

A.3 The data has been sourced with contributions from British embassies overseas and tax experts, as well as published sources, which are contained in the footnotes where applicable. To the best of our knowledge, the most up-to-date and accurate information has been used.

A.4 The main results of this study are summarised in Table A.1 below.

Table A.1: Main Results of International Comparisons

| Country | Does the country charge non-residents CGT? | Are residents charged CGT on their worldwide gains? | Basic CGT Rate for non-residents | Collection Mechanism for non-residents |
|---|---|---|---|---|
| Australia | Yes* | Yes | Ranges from 32.5% - 45% | Self-reported but possibility of withholding tax from 2016. |
| Canada | Yes* | Yes | Highest effective rate is 24.8% | Withholding tax |
| France | Yes | Yes | 34.5%** | Withholding tax |
| Germany | Yes* | Yes | Ranges from 14% – 45% | Self-reported |
| Italy | Yes* | Yes | Ranges from 23% - 43% | Self-reported |
| Japan | Yes* | Yes | Long-term gain:15% Short-term gain:30% | Withholding tax under certain conditions. |
| Portugal | Yes | Yes | Flat rate of 28% | Self-reported |
| Russia | Yes* | Yes | Flat rate of 30% | Self-reported |
| Spain | Yes | Yes | Ranges from 19% - 36% | Withholding tax |
| USA | Yes, under certain conditions | Yes | 19% | Withholding tax under certain conditions. |

*CGT is charged through the income tax system. **Under exceptional circumstances this can be higher. See Table A.4.

[1] G8: Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States of America. OECD 3: Australia, Portugal and Spain. Countries are presented in alphabetical order.

A.5 All the countries surveyed do take up their primary taxing rights on gains relating to immovable property, meaning that an individual pays tax in the country where their property is located first. In this context, the UK is an anomaly as it currently does not charge non-residents CGT. There is a DTA between the UK and all the countries surveyed here. The effect of a DTA is generally to provide that tax paid by a non-resident in the state of source will be credited against tax paid in the state of residence.

A.6 Canada, France, Japan, Spain and the US operate withholding taxes to ensure tax collection from non-residents. In many of these instances, specific conditions and exclusions apply.

## Australia

A.7 Australia charges non-residents tax on gains from disposing of assets which qualify as taxable Australian property (TAP). Residential property is included in TAP. The capital gain is treated as income and liable for Australian income tax, although the tax is still commonly referred to as CGT by the Australian authorities.

A.8 The relevant rates are described in Table A.2 below.[2] Losses can be offset against losses and can generally be saved and offset against future gains.

Table A.2: Australian Income Tax Rates

| | | |
|---|---|---|
| Residents | | |
| £10,111 - £20,556 | Nil | 19% |
| £20,557 - £44,444 | £1,985 | 32.5% |
| £44,444- £100,000 | £9,748 | 37% |
| Over £100,000 | £30,304 | 45% |
| Non-residents | | |
| Taxable Income | | |
| 0 - £44,444 | Nil | 32.5% |
| £44,444 - £100,000 | £14,444 | 37% |
| Over £100,000 | £32,500 | 45% |
| £10,111 - £20,556 | Nil | 19% |

A.9 There are a number of relevant allowances. Residents are exempt from CGT on their primary place of residence (PPR). Non residents can avail of the PPR exemption in certain circumstances.

A.10 A "CGT 50% Discount Rule" applies to residents, whereby when the asset is held for more than a year, only half of the net capital gain income is taxable. This allowance is not available to non-residents where the gain was accrued after 8th May 2012.

A.11 For both residents and non-residents, tax on capital gains is not due on assets acquired before September 1985.[3]

A.12 There is no supplementary tax on large gains.

A.13 Residents pay CGT based on their world-wide assets. A DTA exists between the UK and Australia.

A.14 Currently there is no withholding mechanism, so non-residents pay CGT through an income tax return. However, a proposal was included in the 2013/14 Federal Budget by the former Labor government to introduce a ten per cent withholding tax of certain TAP by non-residents above £1,388,888,[4] to apply from 1st July 2016.[5]

[2] The values given in Table A.2 are based on the conversion rate £1 = A$1.80.

[3] This corresponds to the date on which Australian CGT was introduced.

[4] This is the equivalent of A$2.5 million, using the conversion rate £1 = A$1.80.

[5] Farmer, N. And Hemmings, S., *Analysis – How countries tax residential property gains for non-residents,* Tax Journal, 2014.

## Canada

A.15 Canada charges non-resident individuals tax on gains from the disposition of residential property in Canada. 50% of the capital gain is included in the taxpayer's income base, which is taxed at progressive income tax rates. Canadian income tax is composed of a federal tax component and a provincial tax component.

A.16 The top federal individual rate is 29%, while the top combined federal and provincial individual rate (in Ontario) is 49.5%.[6] Because only half of the gain is taxed, these translate into effective rates of 14.5% and 24.8% respectively.

A.17 Capital losses can generally be applied against capital gains, subject to certain limitations on losses arising from the disposition of properties such as owner-occupied residential property.

A.18 Canada has a principle residence exemption. An individual can retrospectively designate one home as their principle residence for each year during which they were a resident, on which any capital gains are exempt from tax.

A.19 There is no exemption based on the length of ownership.

A.20 There is no supplementary tax on large gains.

A.21 Individual residents pay CGT on residential property outside of Canada. Where such property is situated in the UK, the Canada-UK double tax treaty grants the UK the right to impose CGT in respect of such property and requires Canada to relieve double taxation.

A.22 Where a non-resident disposes of Canadian residential property, the purchaser is required to withhold twenty-five per cent of the gross proceeds and remit it to the tax authorities, unless the non-resident vendor obtains a "clearance certificate" from the Canada Revenue Agency verifying that the vendor has made arrangements for the payment of any resulting tax.

A.23 The purchaser is relieved of this duty if the following three conditions hold: (i) the purchaser concludes after reasonable inquiry that the vendor is resident in a country with a DTA with Canada; (ii) at the time of the disposition, this DTA provides that the property is treaty-protected and (iii) the purchaser sends the tax authorities basic information about the transaction, vendor and the purchasers within thirty days of the sale.

[6] For a complete presentation of the Canadian federal and income tax rates, please see: http://www.cra-arc.gc.ca/tx/ndvdls/fq/txrts-eng.html

## France

A.24 France charges non-residents CGT on gains from the disposal of residential property in France. The relevant rates are provided in Table A.4 below. There is no specific treatment for capital losses.

Table A.3: French CGT Rates

| Resident Status | Rate of CGT |
|---|---|
| Resident | 34.5% |
| Non-residents domiciled in the European Economic Area (EEA) | 34.5% |
| Non-residents domiciled outside the EEA but where there is a tax agreement with France | 48.83% |
| Non-residents domiciled in a non-cooperative territory (a territory which does not have a tax agreement with France) | 90.5% |

A.25 These rates comprise of a CGT component and a social charge component. Non-residents were previously only liable for the former, but since 2012 have been liable for both.

A.26 The disposal of a principal private residence by a resident taxpayer (and in some circumstances by non-residents) is not taxable provided it that it was the taxpayer's principal residence at the time of sale.[7]

A.27 An allowance based on the length of ownership applies from the sixth year of ownership onwards for both residents and non-residents. The gross capital gain is reduced by the relevant allowance, as presented in Table A.6, before CGT is calculated in the usual way. Capital gains are thus exempt from CGT after 30 years of ownership.

Table A.4: Length of Ownership Allowances

| Length of Ownership (Years) | Reduction in the Gross Capital Gain |
|---|---|
| 6 – 17 | 2 percentage points for each year |
| 18 – 24 | 4 percentage points for each year |
| 25 – 30 | 8 percentage points for each year |

A.28 A supplementary tax on large gains applies to both residents and non-residents, as outlined in Table A.5. For each tax band there is a dampening mechanism to reduce the level of the charge for the first £8,232 (€10,000) of the gain in that band.

Table A.5: Additional French CGT Rates on Large Gains

| Amount of Gain | Additional Tax |
|---|---|
| £41,667 - £83,333[8] | 2% |
| £83,334 - £125,000 | 3% |
| £125,001 - £166,667 | 4% |
| £166,668 - £208,333 | 5% |
| Greater than £208,333 | 6% |

[7] Source: KPMG, 2014. See: http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/taxation-international-executives/france/pages/income-tax.aspx#11

[8] The values supplied in Tables A.3, A.4 and A.5 are based on the conversion rate £1 = €1.20.

A.29 French residents are subject to CGT on their world-wide gains. A DTA exists between the UK and France.

A.30 Non-residents are subject to a withholding tax. Nineteen per cent of the gain is withheld within one month of the sale.[9]

[9] Farmer, N. And Hemmings, S., *Analysis – How countries tax residential property gains for non-residents,* Tax Journal, 2014.

## Germany

A.31 Germany charges non-residents tax on gains from the disposal of residential property in Germany, provided that the property is sold within ten years of ownership.[10] In this case, the capital gain is treated as income and liable for German income tax. The relevant rates are described in Table A.7 below.[11] Losses can be offset against gains, subject to certain conditions.

Table A.6: Rates of German Income Tax

| Threshold | | Income Tax Rate |
|---|---|---|
| Single People | Married Couple | |
| Less than £6,670[12] | Less than £6,670 | Nil |
| £6,671 – £44,068 | £6,671 – £44,068 | 14% - 42% (increasing at a linear rate) |
| Over £44,069 | Over £44,069 | Constant 42% |

A.32 There do not appear to be any main home allowances or additional taxes on large gains.

A.33 German residents are subject to unlimited tax liability and as such are taxed on their worldwide income.[13] A DTA exists between the UK and Germany.

A.34 German private investment income, which includes capital gains, is generally subject to a withholding tax.[14] However capital gains on residential property are reported by filing an income tax return.

10 If a German property is sold after ten years of ownership, any gains are exempt from CGT for both residents and non-residents.

11 These rates do not include the additional solidarity charge or "Solidaritätszuschlag"(an additional income tax to finance German reunification), nor additional Church taxes, which apply in some German states.

12 The values supplied in Table A.6 are based on the conversion rate £1 = €1.20

13 Source: Bundesministerium der Finanzen (German Federal Ministry of Finance), *A to Z of Taxes,* 2011. See: http://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Service/Publications/Brochures/2012-10-30-abc-on-taxes-pdf.pdf?__blob=publicationFile&v=7

14 Source: KPMG, 2014. See: http://www.kpmg.com/global/en/issuesandinsights/articlespublications/taxation-international-executives/germany/pages/income-tax.aspx

## Italy

A.35 Italy charges non-residents tax on gains from the disposal of residential property in Italy, provided that the property is sold within five years of ownership. Therefore, any property sold after five years will not give rise to CGT.[15]

A.36 If CGT applies, the capital gain is treated as income and liable for Italian income tax. The relevant rates are described in Table A.8 below. Capital losses cannot be offset against gains.

Table A.7: Rates of Italian Income Tax[16]

| Income Band | Rate |
|---|---|
| 0 – £12,500 | 23% |
| £12,501 – £23,333 | 27% |
| £23,334 – £45,833 | 38% |
| £45,834 – £62,500 | 41% |
| Above £62,500 | 43% |

A.37 Italian residents can avail of a primary residence exemption, as properties bought under the Prima Casa (main dwelling) status are exempt from CGT. However a non-resident cannot consider any house in Italy as Prima Casa.

A.38 As an alternative to the rates described in Table A.8, individuals can avail of a lower flat rate of 20% if they choose to use an official notary, who will collect the tax on behalf of the Italian authorities. This is designed to incentivise the involvement of public officials. If this option is not chosen, the tax due on capital gains is collected along with the tax due on the rest of an individual's income. This is done by self-reporting.

A.39 There are no supplementary charges on large gains.

A.40 Italy charges income tax on the worldwide income of its residents. A DTA exists between Italy and the UK.

[15] Farmer, N. And Hemmings, S., *Analysis – How countries tax residential property gains for non-residents,* Tax Journal, 2014.

[16] The values supplied in Table A.7 are based on the conversion rate £1 = €1.20

## Japan

A.41 Japan charges non-residents tax on gains from the disposal of residential property in Japan. The capital gain is treated as income and liable for Japanese income tax, as described in Table A.9 below. Japanese income tax is composed of a National Income Tax (NIT) component and a Local Inhabitant Tax (LIT) component. Permanent and non-permanent residents are subject to both components, while non-residents are only subject to the former.[17] Losses can be offset against gains under certain conditions.

**Table A.8:** Japanese CGT Rates[18]

| Type of gain | NIT Rate | LIT Rate |
|---|---|---|
| Long term gain (Property that has been held for more than 5 years) | 15% | 5% |
| Short-term gain (Property that has been held for less than 5 years) | 30% | 9% |

A.42 There are allowances if the property is a person's residential home, defined as the property in which the person currently resides, or in which the person formerly resided within 3 years of moving out. The maximum deduction that can be claimed is the smaller of £177,012[19] or the actual gain calculated on sale.

A.43 There are also allowances related to when the property is sold to a Government body or certain public corporations.

A.44 There do not appear to be any additional taxes on large gains.

A.45 Permanent residents are taxed on their worldwide income. Non-permanent residents are taxed on their Japanese-sourced income and on foreign source income paid in or remitted into Japan. A DTA exists between the UK and Japan.

A.46 The sale of land or buildings held by non-residents is subject to a ten per cent withholding tax, except if the property has been purchased by individuals for residential use and the sales value is no more than £590,040.[20]

[17] For the purposes of Japanese tax law, a permanent resident is defined as an individual who is a Japanese national, or who has a domicile in Japan, or who resided in Japan for more than five years in the last ten years. A non-permanent resident is defined as an individual who is not a Japanese national and has a domicile in Japan or has resided in Japan for more than one year and less than five years in the last ten years. For more see Deloitte, *Japan: Individual Taxation 2013,* 2013.

[18] These rates do not include the Tohoku earthquake restoration surtax.

[19] This is the equivalent of JYN 30 million using the conversion rate £1 = JYN169

[20] This is the equivalent of JYN100 million using the conversion rate £1 = JYN 169,

## Portugal

A.47 Portugal charges non-residents tax on gains from the disposal of residential property in Portugal acquired after 1st January 1989. The entire capital gain is subject to a flat rate of tax at 28 per cent, as described in Table A.10 below.

A.48 This differs to the tax treatment of residents, who are only subject to pay tax on half of the gain. This portion of the capital gain is treated as income and liable for Portuguese income tax, at the progressive rates described in Table A.10 below.[21]

A.49 Capital losses can be offset against gains under certain conditions.

Table A.9: Portuguese CGT Rates[22]

| Residents: Portuguese Income Tax Rates | | |
|---|---|---|
| Taxable Income | Total Tax on Income below Bracket | Tax Rate on Income in Bracket |
| 0 - £5,833 | Nil | 14.5% |
| £5,834 - £16,667 | £757 | 28.5% |
| £16,668 - £33,333 | £2,233 | 37% |
| £33,334 - £66,667 | £4,900 | 45% |
| Over £66,667 | £6,900 | 48% |
| Non-residents: Flat CGT Rate | | |
| Flat rate 28% | | |

A.50 A main home exemption is available subject to certain conditions. Capital gains on the sale of a main residence are exempt from tax if the proceeds are used to purchase another permanent resident in Portugal, or in another EEA member state, provided that, in the latter case, arrangements are in place for the exchange of information in tax matters.[23]

A.51 Portuguese residents are taxed on their worldwide income. A DTA exists between Portugal and the UK.

A.52 Non-residents are required to report their gains by filing a tax return.

[21] Source: KPMG, 2014. See http://www.kpmg.com/global/en/issuesandinsights/articlespublications/taxation-international-executives/portugal/pages/income-tax.aspx
[22] The values supplied in Table A.9 are based on the conversion rate £1 = €1.20.
[23] Source: Deloitte, 2014. See: See http://www.deloitte.com/assets/Dcom Portugal/Local%20Assets/Documents/Tax/dttl_tax_highlight_2013_Portugal.pdf

## Russia

A.53 Russia charges non-residents tax on gains from the disposal of residential property in Russia. The capital gain is treated as income and is liable for Russian income tax, as described in Table A.11 below. There are no special rules or exemptions for the taxation of gains on the sale of a principle residence. Capital losses cannot be offset against gains.

Table A.10: Russian Income Tax Rates

| Rate for Russian Resident | Rate for Non-resident |
|---|---|
| 13% Flat Rate | 30% Flat Rate |

A.54 Capital gains of Russian residents are exempt from tax if the resident owned the asset for at least three years. For property held for less than three years, capital gains are calculated as the difference between the sale proceeds and the documented acquisition cost (subject to a maximum deduction of £17,007[24]).

A.55 Capital gains of non-residents are subject to taxation (regardless of the length of ownership) and on the entire gross proceeds from the disposal of assets in Russia. No deduction of acquisition cost is applicable.

A.56 Russian residents are taxed on their worldwide income. A DTA exists between Russia and the UK.

A.57 The collection mechanism for both residents and non-residents is self-reporting.

[24] This is the equivalent of 1 million Russian Rubles, using the conversion rate £1 = RUB 58.80.

## Spain

A.58 Spain charges non-residents tax on gains from the disposal of residential property in Spain. Capital gains made on assets held more than a year are generally treated as savings income and taxed according to the rates described in Table A.12 below. Note that the rates differ for residents and non-residents. Losses can be offset against losses under certain circumstances.

Table A.11: Spanish CGT Rates[25]

| Residents | | |
|---|---|---|
| Taxable Income | Total Tax on Income below Bracket | Tax Rate on Income in Bracket[26] |
| 0 – £5,000 | Nil | 19% |
| Greater than £5,001 | £1,050 | 21% |
| Non-Residents | | |
| Flat rate of 19%[27] | | |

A.59 For gains made on assets held less than a year, the income is treated as general income and taxed at progressive income tax rates.[28]

A.60 Capital gains arising from the sale of a principle residence are exempt from CGT, subject to a number of conditions, including that the proceeds be invested in a new principle residence.

A.61 There is no supplementary charge on large gains. Adjustment is made for the impact of inflation on the acquisition cost.

A.62 Spanish residents are taxed on their worldwide income. A DTA exists between Spain and the UK.

A.63 Non-residents selling Spanish residential property are generally subject to a withholding tax of three per cent upon the price received.[29]

[25] The values supplied in Table A.11 are based on the conversion rate £1 = €1.20.
[26] For the years 2012, 2013 and 2014 the tax rates are increased to twenty-one per cent on the first £5,000 slice and, twenty-five per cent on the income between £5001 and £20000 and twenty-seven per cent on any excess.
[27] For the years 2012, 2013 and 2014 the tax rate is increased to twenty-one per cent.
[28] For further details on Spanish income tax rates, please see Section 1.10 Rates of IBFD, *Individual Taxation Spain,* 2014.
[29] IBFD, *Individual Taxation Spain,* 2014.

## United States of America

A.64 Due to the complexities of the federal and state-level tax systems in the United States, this country specific study seeks to provide an overview of the main components of CGT in the United States, subject to data availability, rather than an in-depth analysis.[30] As such it does not follow the same format as the rest of the country-specific studies.

A.65  Non-residents are subject to a ten per cent withholding CGT where US property is sold for more than £180,723 ($300,000)[31]. This is due on the entire amount realised on the sale.

A.66 This withholding tax is not required if the following two conditions hold: (i) the transferee acquires the property for use as his or her residence and (ii) the amount realised on the disposition of the property is less than £180,723 ($300,000).

A.67 A US real property interest (USRPI) is acquired for use as a residence if on the date of the transfer the transferee has definite plans to reside at the property for at least half the number of days that the property is used by any person during each of the first two twelve month periods following the date of the transfer. The number of days the property will be vacant is not taken into account in determining the number of days it is used by any person. A transferee is considered to reside at the property on any day on which a member of his family (which is strictly defined) resides at the property.

A.68 Residents pay federal tax on their worldwide income.[32] A DTA exists between the United States and the UK.

[30] The data contained in this country-specific study is sourced largely from Farmer, N. And Hemmings, S., *Analysis – How countries tax residential property gains for non-residents,* Tax Journal, 2014.

[31] The values supplied in this study are based on the conversion rate £1 = $1.66

[32] Source: KPMG, 2013. See: http://www.kpmg.com/global/en/issuesandinsights/articlespublications/taxation-international-executives/united-states/pages/income-tax.aspx.

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This document can be downloaded from www.gov.uk

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